



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

Solicitation Number: 18-4150

Project Number: FY1701

Materials and/or Service: Goodyear Recreation Campus Phase I

Solicitation Due Date: **January 23, 2018** **Time:** 3:00 pm (Arizona Time)

Mailing Address: City of Goodyear, City Hall Front Desk
190 North Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338

Procurement Officer: Victoria Jackson, CPPB
Phone: (623) 882-7845
Email: Victoria.jackson@goodyearaz.gov

All Offers must be received by the City of Goodyear, City Hall Front Desk, at the specified location by the date and time cited above. Late Offers will not be considered. Offers received by the correct date and time shall be publicly opened and read. Offerors are advised to carefully read the entire Solicitation Package. Offers that do not comply with all Instructions to Offerors may be disqualified.

Offerors must register as a vendor with the City of Goodyear at <https://procurement.goodyearaz.gov/bsa/> to obtain a solicitation packet. Solicitation packages can be obtained by downloading from the City of Goodyear's website: www.goodyearaz.gov and following these instructions: Enter City website, click on BUSINESS, click on Vendor Services/Procurement, click on Solicitations for Bids/Proposals, click on RFQ 18-4150. Should you experience problems downloading the solicitation, contact Victoria Jackson, CPPB at the above email address.

Attendance at the Pre-Offer Conference is mandatory. Offerors are also strongly encouraged to read entire solicitation prior to Pre-Offer Conference. Copies of the solicitation will not be handed out at the Pre-Offer Conference.

Pre-Offer Conference: **January 11, 2018, 10:00 a.m. – Noon (Arizona Time)**

Pre-Offer Location: City of Goodyear – City Hall
190 N Litchfield Road
Goodyear, AZ 85338

All communications concerning this solicitation must be directed to responsible Procurement Officer identified above, via email only. Communications with other city staff may disqualify you from the evaluation process.

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Published in the Arizona Republic Southwest Section on: December 20, 22, 27 and 29, 2017



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

SECTIONS

PAGE

Notice Page	1
Table of Contents	2
Section I - General Information	3
Section II - Statement of Qualifications Requirements	6
Section III - Statement of Qualifications Organization and Format	8
Section IV - Statement of Qualifications Evaluation Criteria	10
Section V - Evaluation and Selection Process	12
Section VI - Additional Information	13
Section VII – Standard Terms and Conditions	14
Section VIII - Special Terms and Conditions	25
Offer and Acceptance	29

ATTACHMENTS

A	Non-Collusion Affidavit Form	30
B	Recreation Campus Site Plan	31

Remaining attachments available under separate cover:

C	Construction Manager at Risk Pre-Construction Service Agreement, ("SAMPLE")	28 pages
---	---	----------



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

SECTION I – GENERAL INFORMATION

INTRODUCTION

The City of Goodyear ("City"), is soliciting proposals from qualified general contractors to perform as a Construction Manager at Risk ("CMAR") and provide Preconstruction Design Phase services for the Goodyear Recreation Campus Phase One (Project). Included will be a Recreation Center, Aquatic Center, Community Park facilities, associated infrastructure and half-street improvements. The construction cost for the three primary features; the building(s), the aquatic facility and the park site development is estimated to be \$30 to \$32 million.

1. BACKGROUND

The City is currently Master Planning an 86-Acre Recreation Campus that is scheduled to be completed early April 2018. Phase One of the Recreation Campus is funded and scheduled to begin construction early to mid-2019 with completion anticipated in June 2020. The Project site is approximately 35-40 acres and is at the northwest corner of Estrella and Goodyear Boulevards, adjacent to Desert Edge High School and Basis School on the South and existing Wild Flower neighborhood to the west and north-west.

The Recreation Campus will serve as the ultimate gathering place for the community to participate in a myriad of activities that foster a sense of community, promote healthy lifestyles (active and passive), and enhance the quality of life for Goodyear citizens and visitors. These diverse opportunities that promote healthy lifestyles is further supported in the City General Plan (voter approved November 2014) as well as the Parks Recreation, Trails, and Open Space Master Plan (adopted July 2014).

2. PROJECT DESCRIPTION

The Recreation Campus Phase I, (Project) will include as the primary features a recreation center, an aquatic center, a 30-acre city community park facility, associated infrastructure and half-street improvements.

The City has contracted with an Engineering Consultant for Project engineering design and construction phase engineering services.

The following Project features may be included as part of Phase I construction:

- 2.1 Recreation center with outdoor recreational aquatics combined facility (approximately 6 acres) may feature the following:
 - 2.1.1 30,000-35,000 square foot recreation center with bath house
 - 2.1.2 Indoor multipurpose sport courts
 - 2.1.3 Indoor multipurpose use areas/rooms
 - 2.1.4 Indoor stage and performing arts areas
 - 2.1.5 Indoor locker, changing, and shower rooms
 - 2.1.6 Zero-depth leisure pool approximately 6,000 square feet, with water slide(s), a lazy river, with splash play features
 - 2.1.7 Competition pool with a diving well
- 2.2 Community Park (30 acres) may feature the following:
 - 2.2.1 Lighted baseball/softball fields
 - 2.2.2 Lighted rectangular multipurpose fields
 - 2.2.3 Lighted sport courts (tennis, basketball, pickleball, and sand volleyball)
 - 2.2.4 Sidewalks, trails and paths



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

- 2.2.5 Tot lots (age appropriate)
- 2.2.6 Picnic areas
- 2.2.7 Restroom and maintenance building(s)
- 2.2.8 Lighted parking lots
- 2.2.9 Security lighting
- 2.2.10 Public plaza space with incorporated art feature(s)
- 2.2.11 Demonstration gardens
- 2.2.12 Ramadas
- 2.2.13 Skate / Bike Park
- 2.2.14 Landscape and irrigation system
- 2.2.15 Irrigation reservoir/pond
- 2.2.16 Site drainage (retention / detention basins) requirements
- 2.2.17 Roosevelt Irrigation District (RID) relocations / modification:
A portion of a RID Canal which provides irrigation water for adjacent agricultural fields cuts through the eastern portion of the site. RID has indicated that development of the Project cannot interrupt the functionality of the canals. The City has funding in place now to do some RID work that will need to be coordinated with **RID's November dry-up period**.
- 2.2.18 Off-site, half street improvements, and associated infrastructure at Harrison, 158th Avenue, and Estrella that could include the following utilities:
 - 2.1.18.1 Electrical
 - 2.1.18.2 Waterlines
 - 2.1.18.3 Sanitary Sewer
 - 2.1.18.4 Storm Sewer/Drainage
 - 2.1.18.5 Gas
 - 2.1.18.6 TV Cable
 - 2.1.18.7 Telephone
- 2.3 City of Goodyear Engineering, City of Goodyear Building Safety, MAG, MCESD, ADWR and ADEQ design and construction standards, supporting documents and permitting submittals as required, reviews, approvals to construct, approvals of construction and Engineers Certificates of Completion, as appropriate.

3. **PROJECT SCHEDULE**

CMAR Preconstruction Design Phase Services Contract award	April 2018
Project Construction Documents complete and approved for permits	February 2019
Guaranteed Maximum Price (GMP) contract award	April 2019
Construction NTP	May 2019
Project completion	June 2020

4. **SCOPE OF WORK**

- 4.1 Overview. The CMAR will be chosen through a qualifications based selection process. The successful CMAR will enter into separate agreements with the City for each project phase:
 - 4.1.1 Negotiated not-to-exceed Preconstruction Design Phase Services agreement; and
 - 4.1.2 Construction Phase Services agreement with a Guaranteed Maximum Price ("GMP")



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

The successful CMAR will participate in the design phase and will hold the construction contract for the three primary feature; the building(s), the aquatics facility, and the park site development. Upon entering into the Construction Phase Service agreement with the City, the CMAR shall assume the risk of project delivery at the GMP and is responsible for construction means and methods.

CMAR assumes the risk for all construction at the contracted GMP. Any work not covered by a budget line item must be included in the contingency amount.

- 4.2 During the Design Phase the CMAR may be required to but is not limited to the following:
 - 4.2.1 Provide detailed independent cost estimating and knowledge of marketplace conditions;
 - 4.2.2 Provide project planning and scheduling;
 - 4.2.3 Provide alternate systems evaluation and constructability studies;
 - 4.2.4 Advise City of ways to gain efficiencies in project delivery;
 - 4.2.5 Provide long-lead procurement studies and possibly initiate procurement of long-lead items;
 - 4.2.6 Assist in the permitting processes;
 - 4.2.7 Protect the City's sensitivity to quality, safety, and environmental factors.
- 4.3 During the Construction Phase the CMAR will be required to complete certain tasks, including but not limited to the following:
 - 4.3.1 Coordinate with various City departments, other agencies, utility companies, etc.
 - 4.3.2 Arrange for procurement of materials and equipment;
 - 4.3.3 Schedule and manage site operations;
 - 4.3.4 Bid, award, and manage all construction related contracts and subcontracts while meeting the City bid requirements;
 - 4.3.5 Provide quality controls;
 - 4.3.6 Bond and insure the construction;
 - 4.3.7 Address all federal, state and City permitting requirements;
 - 4.3.8 Address City issues;
 - 4.3.9 Maintain a safe work site for all project participants.

The scope of work contemplated also includes assistance with the design of the Project as identified in Section 2 – Project Description. The selected CMAR will be responsible for complying with cost estimating, constructability review and value engineering of the three primary Project features; the building(s), the aquatic facility, and the park site development. Tasks will include, but may not be limited to civil, structural, plumbing, mechanical, electrical, landscape, easements and temporary construction easement(s), and staging area(s) throughout the design process and deliver a GMP Proposal at 90% construction documents.

5. THE USE OF THE CONSTRUCTION MANAGER AT RISK PROCESS

The City reserves the right to complete or cancel any project phase in whole or in part.

The City intends to select a CMAR contractor through a procurement process pursuant to A.R.S. § 34-603 and wishes to employ the CMAR project delivery process capable of constructing the three primary project features; the building(s), the aquatic facility, and the park site development.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

The selected CMAR shall be able to develop a creative, value engineering approach through the interactive efforts of an experienced, highly motivated team that has expertise in successfully constructing the three primary features the building(s), the aquatic facility, and the park site development. The CMAR process is expected to foster a cooperative owner-designer-contractor effort to review design documents, to identify potential cost saving strategies and value engineering opportunities, and to complete construction of the improvements. The CMAR will be encouraged to develop creative options to maximize the value of the product received by the City.

The City's primary objective in utilizing the CMAR approach is to bring the best available construction experience and expertise together to meet the budget and schedule challenges presented by the project's three primary features; the building(s), the aquatic facility, and the park site development. This will require the owner-designer-contractor to work cooperatively, efficiently, and effectively to deliver the highest valued product to the City.

The Contractor, working with their major subcontractors, shall provide an accurate project delivery schedule, maintain delivery per the approved schedule, optimize the use of the available budget, and perform to the highest construction standards in order to achieve a successful quality construction project.

SECTION II – STATEMENT OF QUALIFICATIONS REQUIREMENTS

1. GENERAL REQUIREMENTS

Responses to this Request for Qualifications ("RFQ") must be in the form of a Statement of Qualifications ("SOQ"), as outlined in this RFQ and as allowed by A.R.S. § 34-603(C). Submittals must be clear, concise, organized as indicated in the outline in Section III and shall include all identified sections. If in the judgment of the City, a SOQ does not conform to the format specified herein, or if any section is absent or significantly incomplete, the City reserves the right to reject the submittal.

Interested firms are required to submit information relative to their qualifications, experience, project understanding and approach, ability to meet the Project's goals and other listed criteria. All requested information must be provided regarding required submittals and key personnel for this Project. *Responses must be made within the appropriate evaluation criteria section for points to be applied.*

Wherever the word "Contractor" is used in this RFQ, it shall mean each or any of the individuals, firms, partnerships or corporations submitting a SOQ for performance of the solicited CMAR services.

2. PRE-OFFER CONFERENCE

A Pre-Offer Conference will be held. Attendance at the scheduled Pre-Offer Conferences is **mandatory**. The date, time and location of the conference are indicated on the Notice page of this document. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the City at this conference and in writing via e-mail. The City will then determine if any action is necessary



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

and will issue a written amendment to the solicitation. *Oral statements or instructions will not constitute an amendment to this solicitation.*

A non-mandatory site visit will immediately follow the Pre-offer conference. No other arrangements for site visits will be accommodated.

3. **INQUIRIES**

Any questions related to the solicitation shall be directed to the responsible Procurement Officer whose name appears on the Notice page **via email only**. The Contractor shall not contact or ask questions of other City staff or the City department for which the requirement is being procured. Any correspondence related to a solicitation should refer to the solicitation number, page, and paragraph number. All questions must be submitted no later than the close of business seven (7) calendar days prior to the opening date.

4. **PANEL CONTACT**

Contractor shall have no exclusive meetings, conversations or communications with an individual evaluation panel member on any aspect of the solicitation, after submittal.

5. **PREPARATION OF OFFER**

Contractors are solely responsible for the delivery of their submittals to the address as it appears on the Notice page of this solicitation.

5.1 **Preparation of Offer:**

- a. It is the responsibility of all Contractors to examine the entire solicitation package and seek clarification from the responsible Procurement Officer of any item or requirement that may not be clear, and to check all responses for accuracy before submitting an offer.
- b. All offers shall be on the forms provided in the solicitation package. It is permissible to copy these forms if required. Telegraphic (facsimile) or email bids will not be considered.
- c. The Offer and Acceptance document shall be returned with the submittal with an original blue ink signature by a person authorized to sign the Offer. Pricing documents and other documents which require information to be filled in must be done in ink, typewritten or computer printed. No Offers will be accepted if pencil is used. Erasures, interlineations, or other modifications in the Offer shall be initialed in original blue ink by the authorized person signing the Offer.
- d. It is the Contractor's responsibility to obtain a copy of any addenda relevant to this solicitation. Failure to submit addenda with the solicitation response may be grounds for deeming a bid non-responsive.
- e. Offers shall be submitted in a sealed envelope provided by the Contractor, and should include the Contractor's name, address and solicitation number on outside of the sealed envelope/package.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

- f. Periods of time, stated as a number of days, shall be calendar days.
- g. It is the responsibility of the Contractor to submit the offer at the place and by the time provided in the solicitation.
- h. Negligence in preparing an offer confers no right of withdrawal after the due date and time of the offer. No offer shall be altered, amended, or withdrawn after the specified offer due date and time.
- i. The City shall not reimburse the cost of developing, presenting, or providing any responses to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

SECTION III – STATEMENT OF QUALIFICATIONS ORGANIZATION AND FORMAT

1. GENERAL

The Statement of Qualifications (“SOQ”) should present clearly and accurately the experience, knowledge and capability of the Contractor by providing a brief, straightforward, concise description of the Contractor's ability to meet the requirements of this RFQ. SOQ emphasis should be on quality, completeness, clarity of content and responsiveness to the requirements.

EACH CONTRACTOR MUST SUBMIT SEVEN COPIES OF THE STATEMENT OF QUALIFICATIONS

The SOQ should be fully self-contained, follow the format outlined below and be without addenda. Presentations within the statement should reflect consideration of the specific evaluation criteria identified in Section IV, Evaluation Criteria.

2. FORMAT

The Selection Committee will evaluate responses based on the SOQ information provided by the Contractors. To allow for a standard basis of evaluation, all SOQs are required to follow the following format.

Contractors shall submit (1) original, marked “original” and seven (7) copies of their SOQ. The SOQ shall not exceed fifteen (15) pages total in length excluding front and back cover pages, cover letter, title page, table of contents, section dividers, signed transmittal letter, *Affidavit of Non-Collusion* and any addenda issued. Pages shall be single-sided 8 ½” x 11”, except one page may consist of an 11” x 17” foldout. Font size shall be no less than 11 point.

Do not include any design concepts, fees, man-hours or pricing related to this project with the SOQ submittal. These materials will not be considered and failure to comply with this provision may result in the rejection of the submittal.

Contractors **MUST SUBMIT A SIGNED COPY OF THE NON-COLLUSION AFFIDAVIT WITH THEIR SOQ.** The affidavit is contained in this RFQ as **Attachment A.**



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

3. **ORGANIZATION**

The information provided herein has been provided to Contractors as a guide to addressing items in your response. SOQ's should contain direct responses to the following requests for information and be organized so that they are readily identifiable. Responses should be thorough and detailed as possible so that the firm's capabilities may be properly evaluated and shall, at a minimum, contain the following information:

3.1 **Cover:**

The cover at a minimum must contain the following data:

- Statement indicating response to:
RSOQ 18-4150
Goodyear Recreation Campus Phase I
Attn: Victoria Jackson, CPPB, Procurement Officer
City of Goodyear, Purchasing
190 N. Litchfield Road
Goodyear, AZ 85338

3.2 **Title Page (one page maximum):**

Include company name, addresses, email/website addresses, phone numbers, fax numbers and names (s) of Principals.

3.3 **Cover Letter (one page maximum):**

Provide a cover letter on the Contractor's company letterhead identifying the Contractor and include an expression of the firm's interest in being selected. Include a brief narrative that summarizes the background and distinguishing qualities or capabilities that uniquely qualify the Contractor for this project. Identify the contact person for the firm's submittal and confirm the availability of the key personnel identified in the SOQ.

3.3.1 List Principal Office location and describe local office work role;

3.3.2 Number of employees;

3.3.3 Length of time your firm has been in business;

3.3.4 Areas of specialty.

This information should also be provided for all firms that make up the team.

3.3.5 Specifically state that:

3.3.5.1 Reasonable diligence has been exercised in the preparation of the SOQ and that all contents are true, accurate and complete, to the best of the signer's knowledge.

3.3.5.2 That no exceptions are taken to the contents of the RFQ and CMAR Agreement or;

3.3.5.3 Specifically identify and explain any RFQ or CMAR Agreement item to which an exception is taken.

Note: Exceptions taken may render an SOQ nonresponsive and exceptions taken may be considered in scoring the SOQ under relevant scoring criteria.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

This letter is to be signed by the individual with authority to bind the Contractor contractually. Please address the letter to the Procurement Officer identified on the Notice page.

3.4 Table of Contents:

The Table of Contents shall include all listed SOQ sections. Please separate and tab each section.

3.5 Required Information:

If selected as a finalist for this Project, the firm will be required to provide a statement from an 'A' minus rated or better Surety Company describing the firm's bonding capacity, commensurate with the project estimate.

3.6 The following shall be included in the SOQ, in a separate tab titled "Appendix", placed at the end of the SOQ, and will not be part of the page count.

3.6.1 Provide a list of current licenses by state, including type, category and number.

3.6.2 List both Arizona professional and Arizona contractor licenses held, including license numbers and note whether licenses are held by the firm, individuals or sub-consultants.

3.6.3 For the proposed CMAR team, provide a maximum two (2) page resume for each team member and key individuals that will be directly involved in the project. Briefly describe their experience with similar projects, number of years with the firm and their length of experience in their respective industry.

4. **GROUND FOR DISQUALIFICATION**

Please be advised that the following will be grounds for disqualification, and will be strictly enforced:

4.1 Receipt of submittal after the specified cut-off date and time.

4.2 Too few copies of the submittal.

4.3 Violating the "Contact with City Employees" contained in this RFQ.

SECTION IV – STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

A firm will be selected through a qualifications based selection process based on the following criteria:

1. **PROJECT UNDERSTANDING AND APPROACH (400 points)**

a. Discuss the major issues your team has identified on this project and how you intend to address those issues.

b. Discuss your team's approach to providing the services in Section I - Project Description and Scope of Work. Include approach and experience with CMAR projects.

c. Describe your team's project management approach and team organization during design and construction phase services. Describe system(s) used for planning, scheduling and estimating. Briefly describe the firm's experience in quality control, dispute resolution, and safety management.

2. **EXPERIENCE OF KEY PERSONNEL AND SUBCONTRACTORS (300 points)**



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

Discuss the experience and qualifications of your selected project team members for projects of comparable character, size, budget and complexity, particularly the Project Manager and the managers of the key disciplines, including subcontractor experience. Describe your approach to overall team formation and coordination of design team members and provide an organizational chart. Resumes, not to exceed two (2) pages in length per team member should be included in the Appendix.

For each key person identified, list their length of time with the firm and at least two (2) comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person.

For other projects provide the following:

- a. Description of project
- b. Role of the person
- c. Project's GMP, final construction cost, and any change orders
- d. Construction dates
- e. Project Owner (include reference contact information)

3. **EXPERIENCE OF THE PRIME FIRM (200 points)**

Discuss the prime firm's experience and qualifications in providing design and construction administration services on at least five (5) similar municipal facilities, including size, budget and complexity.

For each project listed provide:

- a. Description of the project
- b. Role of the firm
- c. Team members and role
- d. Project owner (include reference contact information)
- e. Project Designer/Architect (include reference contact information)
- f. Original GMP, size, any change orders, and final construction costs of the project
- g. Construction dates
- h. At least 3 photographs of the project with a description for each photograph

4. **SUBCONTRACTOR SELECTION PLAN (100 points)**

- a. Describe the firm's plan to select and engage major Subcontractors and major suppliers to complete the project work. As a minimum, describe which tasks the firm proposes to perform with its own forces and which major tasks will be executed by subcontractors.
- b. Identify proposed selection method to be used in selecting key Subcontractors and suppliers. Methods available are either by qualifications-based selection only or by a combination of qualifications and price.
- c. Identify which key Subcontractors, if any, are proposed to be selected early in the design process to engage with the design team in a design assist role, with justification to support that recommendation.
- d. Identify your team's familiarity with City of Goodyear procedural requirements and/or local issues pertinent to this project, which enhances your qualifications to successfully perform pre-construction design services for this project.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

SECTION V – EVALUATION AND SELECTION PROCESS AND SCHEDULE

1. OVERVIEW

This is a qualifications-based selection process as authorized by A.R.S. § 34-603. The initial activity will involve an evaluation and scoring of each Contractor's qualifications and relevant experience, as indicated in its SOQ. Negotiations will commence with the highest ranked firm on the Final List in accordance with A.R.S. § 34-603(E) and will proceed as set forth therein; or the solicitation may be cancelled pursuant to A.R.S. § 34-603.

2. QUALIFICATION FOR EVALUATION

To qualify for evaluation, the SOQ must have been submitted on time and materially satisfy all requirements identified in this document.

3. EVALUATION PANEL

Submittals will be evaluated by an evaluation panel. Award shall be made to the responsive, responsible Offeror whose SOQ is determined to be the most advantageous to the City.

4. SOQ EVALUATION AND RANKING PROCESS

The City intends to award a Contract to the most qualified Contractor based on demonstrated competence and qualifications. SOQ submittals that are responsive to the requirements of this RFQ will be evaluated by the Selection Committee and awarded points for each stated criteria item as follows:

	<u>Maximum Achievable Points</u>
1. Project Understanding and Approach	400
2. Experience of Key Personnel and Subcontractors	300
3. Experience of Prime Firm	200
4. Subcontractor Selection Plan	<u>100</u>
Total available points 1,000	

The Selection Committee SOQ ranking process will result in an award based on the highest scored SOQ.

5. INTERVIEWS

Following evaluation of the Proposals and Statements of Qualifications, a shortlist of at least three but not more than five (3-5) firms may be determined based upon the composite score of Evaluation Panel members. A presentation-interview session with each of the top ranked firm(s) may comprise the second half of the evaluation/selection process, if deemed necessary by the City. In the presentation-interviews, candidate firms will be required to demonstrate their understanding and familiarity with the scope, location, and other aspects of this project. The Evaluation Panel members will have the opportunity to discuss questions regarding the firms' submittal and presentation at that time. Criteria and weighting for evaluation of the presentation-interviews are as follows:

	<u>Maximum Points Achievable</u>
1. Approach to planning and construction including innovative ideas	300



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

2. Identification of issues or problems that will need to be considered	250
3. Observation of existing conditions and grasp of key project information	200
4. Experience and capabilities for performing CMAR design and construction phase services	100
5. Define why their firm should be engaged	75
6. Overall quality of presentation/ interview	<u>75</u>

Total available points 1,000

It is highly recommended that candidate firms visit the project site. The City reserves the right to proceed to Final Ranking based on the Proposals and Statements of Qualifications submitted without conducting Interviews.

6. **FIRM SELECTION**

The City reserves the right to proceed to Final Ranking based on the Statements of Qualifications without conducting Interviews. If Interviews are held, The Evaluation Panel members may also consider information from the Statements of Qualifications. The Evaluation Panel members will then formulate a consensus ranking, notify each of the candidate firms of the final rankings and meet with the top-ranked firm for the purpose of initiating contract negotiations. If negotiations are unsuccessful, the City will terminate negotiation efforts and open negotiations with the 2nd ranked firm. This process will continue until negotiation efforts are successful.

7. **SCHEDULE**

The following tentative schedule has been prepared for this project.

Pre-submittal conference	January 11, 2018
SOQ due date	January 23, 2018
Contractor Selection	April, 2018
Anticipated Award of Contract (Design Phase Services)	April, 2018

The City will enter into negotiations with the selected Contractor and execute a contract upon completion of negotiations of the contract terms and proposed fee. If the City is unsuccessful in negotiating a contract with the selected Contractor, the City may then decide to negotiate with the second or third highest scored team until a contract is executed. The City may, at any time, at its sole discretion, decide to terminate the selection process.

SECTION VI – ADDITIONAL INFORMATION

1. **INSTRUCTIONS**

The City shall not be held responsible for any oral instructions. Any changes to this RFQ will be in the form of an addendum to the SOQ. The addenda's if applicable are available via download from our City of Goodyear website.

2. **CITY RIGHTS**

The City reserves the right to reject any or all SOQ's, to waive any informality or irregularity in any SOQ received, and to be the sole judge of the merits of the respective SOQ received.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

3. **CONTACT WITH CITY EMPLOYEES**

Beginning on the date the RFQ is issued and until the date the contract is awarded or the RFQ withdrawn, all persons or entities that respond to the RFQ, including their authorized employees, agents, representatives, proposed partner(s), subcontractor(s), joint venture(s), member(s), or any of their lobbyists or attorneys (collectively the Contractor), will refrain from any direct or indirect contact with any person (other than the designated Purchasing Officer) who may play a part in the selection process, including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads, the Mayor and other member of the Goodyear City Council. As long as the RFQ solicitation is not discussed, Contractors may continue to conduct business with the City and discuss business that is unrelated to this RFQ solicitation with City staff.

4. **RESERVATION OF RIGHTS**

There shall be no express or implied intent to contract until expressly stated in writing by the City, an award is made, and all conditions stated herein are satisfied. The City reserves the right to reject any or all SOQs, or to withhold the award for any reason it may elect, and to waive or decline to waive irregularities in any proposal.

SECTION VII – STANDARD TERMS AND CONDITIONS

1. **SERVICES PROVIDED BY CONTRACTOR**

- 1.1 **Scope of Work** Contractor shall provide those “Services” described in the Scope of Work. Additional Services, which are outside the scope of basic services contained herein shall not be performed by Contractor without prior written consent of the City. Authorized additional Services shall be compensated for by a fee mutually agreed upon between the City and Contractor.
- 1.2 **Professional Practices**. All Services shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices. Contractor is responsible for knowing and complying with all applicable laws, rules, and regulations, including all applicable building regulations, license and permits requirements.
- 1.3 **Performance to City’s Satisfaction**. Contractor agrees to perform all Services required by this Contract to the complete satisfaction of the City and as required herein. If the quality of work is not satisfactory to the City, in addition to any and all other remedies available by law, the City in its discretion has the right to do any or all of the following: (i) Meet with Contractor to review quality of work and resolve the matters of concern; (ii) Require Contractor to repeat the work at no additional fee until it is satisfactory to the City; and/or (iii) Terminate the Contract as provided herein.
- 1.4 **Investigation**. Contractor warrants and agrees familiarity of the work is required to perform the Services, is satisfied as to the conditions under which it is to be performed, is



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

competent to perform the Services and enters into this Contract based upon the Contractor's own investigation.

2. COMPENSATION AND BILLINGS/PAYMENTS

- 2.1 Compensation. Contractor's total compensation, including those Services furnished by its Subcontractors, shall not exceed the amounts offered by Contractor in the Fee Schedule.
- 2.2 Method of Billing. Contractor will invoice City by the 10th day of each month for Services provided during the prior month. Invoices shall contain itemized hourly fees and specifically describe the Services performed, the name of the person(s) performing the Services, and supporting documentation.
- 2.3 Review and Withholding. City's Project Manager shall review invoices to certify payment requests. If an invoice is rejected, the City Project Manager will issue a notice of the items not approved for payment. If during the course of the Contract, Services performed do not meet the requirements set forth in the Contract, Contractor shall correct or modify the work to comply with the Contract requirements and the City shall have the right to withhold payment for such work until Contractor complies with the requirements of the Contract to the reasonable satisfaction of the City.
- 2.4 Payment. City shall pay Contractor within 30 days from the date the City receives a complete, correct and approved invoice.
- 2.5 Advance/Late Payments. Advance payments are not authorized. The City will not honor any invoices or claims which are tendered more than one (1) year after the last item of the account accrues.
- 2.6 Fund Appropriation Contingency. Funds may not presently be available for performance under this Contract beyond the City's current fiscal year starting July 1 and ending on June 30th of the following year. If payment for Contract Services extends into a new fiscal year, the City's obligation to pay for such performance is contingent upon approval of future appropriations by City Council to fund this Contract. The City shall have no legal liability to pay funds due for performance under the terms of the Contract until and unless such funds are appropriated.
- 2.7 Free on Board ("FOB") Destination. All prices are F.O.B final destination, unless otherwise provided.
- 2.8 Taxes. Contractor is solely responsible for any and all tax obligations that may result from Contractor's performance of this Contract.

3. PROJECT TEAM/SUBCONTRACTORS/CITY PROJECT MANAGER

- 3.1 Project Team Selection. Prior to the start of any Services, Contractor shall provide the City detailed resumes of the proposed project manager, team members, and all subcontractors Contractor wishes to assign or use to perform the Contract Services for review and final



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

approval by the City. Contractor will maintain an adequate and competent staff of qualified persons with sufficient training, knowledge and experience consistent with applicable standards as required by this Contract. The project manager shall be responsible for and supervise all project team members and any other employees and subcontractors assigned by the Contractor. Contractor agrees that, once assigned to work under this Contract, the project manager and team shall not be removed or replaced without prior written consent of the City.

- 3.2 Discharge, Reassign, Replacement. Contractor will not discharge, reassign, replace or diminish the responsibilities of any team member approved by the City without City's prior written consent unless that person leaves the employment of Contractor, in which case the substitute must be approved by the City. Contractor will promptly remove any project team member at the City's request if that member's performance does not equal or exceed the level of competence the City may reasonably expect of a person performing those duties or if the City reasonably believes the acts or omissions of that person are detrimental to the development of the Project.
- 3.3 Coordination; Interaction. Contractor's project team are expected to work in close consultation and cooperation with all professionals working on the Project.
- 3.4 Subcontracts. Contractor shall not enter into any subcontract for the performances of any Service for this Contract without the prior approval of the City's Project Manager. Contractor shall identify all proposed subcontractors and subcontractor's proposed responsibilities. All subcontracts shall incorporate by reference all terms and conditions of this Contract. Contractor is solely responsible for the performance and payment of its subcontractors.
- 3.5 City Project Manager. The City will designate a City Project Manager to act on behalf of the City during the term of this Contract. The City Project Manager has the authority to administer this Contract and shall oversee and monitor compliance with all Contract terms and conditions. All requests for information or decisions to be made by the City for this Contract shall be directed to the City Project Manager.

4. LICENSING, DEBARMENT AND SUSPENSION

- 4.1 Licensing/Permits. Contractor warrants and certifies that Contractor and its Subcontractors will maintain valid licenses, registrations, permits, and other approvals necessary to perform the Services required under this Contract ("Approvals"). Contractor shall immediately advise the City in writing of any change in information provided by Contractor or its subcontractors as it relates to any Approvals. Noncompliance with this provision is a material breach of Contract.
- 4.2 Debarment/Suspension. Contractor warrants and certifies neither Contractor nor any of its subcontractor(s):
- Are presently debarred, suspended, proposed for debarment, declared ineligible or otherwise legally excluded from contracting with any federal, state or local government entity; and



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

- b. Have not been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property within a three (3) year period preceding this Contract;
 - c. Are not, or have not been, indicted of or otherwise criminally charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing any public transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and
 - d. Have not had one or more public transaction (federal, state or local) terminated for cause or default.
- 4.3 City has no affirmative duty or obligation to confirm or deny the existence or issuance of any Approvals or Debarments, or to examine Contractor's contracting ability.

5. WORK PRODUCT/CONFIDENTIALITY/ENCRYPTION

- 5.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this Contract and/or any related subcontract ("Intellectual Property") shall be work made for hire and the City shall be considered the creator of such Intellectual Property. The City shall own the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the City, within 30 days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to vest ownership of the Intellectual Property in the City and shall take no affirmative actions that may have the effect of vesting all or part of the Intellectual Property in any entity or person other than the City. If applicable, Contractor shall place the professional seal of Contractor on all plans and documents prepared in the performance of this Contract. This section is intended to apply to all original designs, plans and specifications exclusively developed for the City by Contractor and not intended to apply to standard details, systems and specifications developed and used by Contractor which shall remain the property of Contractor and may be used with other projects without City's consent. Contractor warrants, and agrees to indemnify, hold harmless and defend the City for, from and against any claim that any Work Product infringes on third-party propriety rights. It is expressly agreed by Contractor that the covenants in this section are irrevocable and perpetual.
- 5.2 Confidential/Proprietary. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Contract are confidential, proprietary information owned by the City. Contractor shall



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager.

- 5.2.1 Contractor, its employees and subcontractors, in the course of their duties, may have access to financial, accounting, statistical, and personnel data of private individuals and employees of the City. Contractor covenants that all such data, documents, discussion, or other information developed or received by Contractor or provided in performance of this Contract, whether electronic format or hard copy, are deemed confidential or restricted City information, and shall be secured and protected to avoid unauthorized access, and not be disclosed by Contractor, its employees or subcontractors without prior written authorization from the City.
- 5.2.2 At a minimum Contractor shall ensure all electronic transmissions of confidential data are encrypted and any cryptographic algorithm implementations used have been validated by the National Institute of Standards and Technology (NIST). The use of proprietary encryption algorithms will not be allowed for any purpose. The export of encryption technologies is restricted by the U.S. Government.
- 5.2.3 In the event that Contractor reasonably believes that any Confidential Data has been compromised, Contractor shall notify the City Attorney immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- 5.2.4 Contractor agrees to comply with this section and the Information Technology Non-Disclosure Agreement attached hereto and incorporated herein by reference; noncompliance is a material breach of Contract.
- 5.3 City Use. City may reuse the Work Product provided by Contractor and its subcontractor pursuant to this Contract at its sole discretion. In the event the Work Product is used for another project or modified by the City without further consultation with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of such use of the Work Product. In such case, City will also remove any seal and title block from the Work Product.

6. **TERMINATION**

- 6.1 Termination. The City may terminate this Contract in whole or in part, with or without cause and for any reason, including the City's convenience, upon thirty (30) days written notice to the Contractor.
- 6.2 Compensation. In the event of termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for Services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed to the satisfaction of the City. This fee shall be in the amount mutually agreed upon by the Contractor and City, based on the Scope of Work and fee schedule. If there is no mutual



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

agreement, the City Project Manager shall determine the percentage of work performed for each task detailed in the Scope of Work, with Contractor's compensation based on such determination and the fee schedule included herein.

- 6.3 Acts of Insolvency/Other. The City may terminate this Contract immediately by written notice to Contractor if any of the following occurs: Contractor becomes insolvent; makes a general assignment for the benefit of creditors; suffers or permits the appointment of a receiver for its business or assets; becomes subject to any proceeding under any bankruptcy or insolvency law, foreign or domestic; is wound up or liquidated, voluntarily or otherwise; persistently or repeatedly refuses or fails to complete the work required herein; persistently disregards law, rules or regulations; or fails to make prompt payment to subcontractors for material or labor.
- 6.4 Documents/Work Product. In the event of termination of this Contract, all documents and work product prepared by Contractor pursuant to this Contract including, but not limited to, finished or unfinished design, development and constructions documents, studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of the City's delivery of termination notice to Contractor, at no cost to the City. Any use of uncompleted documents without specific written authorization of Contractor shall be at City's sole risk and without liability or legal expense to Contractor.

7. REPRESENTATIONS/WARRANTIES

- 7.1 Warranties. Contractor warrants that all goods and Services provided under this Contract shall fully conform to the specifications of this Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.2 Safety. Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of law, rules, and regulations. If applicable, Contractor shall erect and properly maintain at all time, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post signs warning against known or unusual hazards.
- 7.3 Responsibility for Errors. Contractor shall be responsible for its work and results under this Contract. Contractor, when requested, shall furnish clarification and/or explanation as may be required by the City's Project Manager regarding any Services rendered under this Contract at no additional cost to the City. In the event that an error or omission attributable to Contractor occurs, Contractor shall, at no cost to the City, provide all necessary design drawings, estimates and other professional services necessary to rectify and correct the matter to the sole satisfaction of the City.

8. CONTRACTOR REPRESENTATIONS

- 8.1 Compliance with law. Contractor, its employees and subcontractors shall provide all Services under this Contract in compliance with all applicable laws, rules, regulations, building codes, life safety codes, and other standards and criteria designated by the City.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

- 8.2 Non-Discrimination. Contractor shall not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 as amended; the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989 and Arizona Executive Order 2009-09 as amended, in performing this Contract and to permit the City to verify such compliance.
- 8.3 E-Verify. Pursuant to the provisions of the Federal Immigration and Nationalization Act and A.R.S. § 41-4401, as amended, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with all federal immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. § 23-214. The City may request verification of compliance from Contractor and any of its subcontractors under this Contract. The City reserves the right to confirm compliance. Should the City suspect or find that the Contractor or any of its subcontractors are not in compliance, the City may pursue any and all remedies allowed by law, including, but not limited to suspension of Services, termination of the Contract for breach or default, and suspension and/or debarment of the Contractor. All costs necessary for compliance shall be solely borne by the Contractor.
- 8.4 Evidence of lawful presence in the United States. In accordance with A.R.S. §§ 1-501, 1-502, as amended, and as a condition of entering into this Contract, a natural person shall execute an affidavit, and present one of the identification documents identified by statute, verifying their lawful presence in the U.S. Failure to execute this affidavit upon submittal of the Contract documents shall be considered nonresponsive and shall result in rejection of the submitted response and automatic cancellation of this Contract. Companies, corporations, and limited partnerships (anyone other than an individual) are not required to complete and submit this form prior to receiving a public benefit.
- 8.5 Liens. Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the Services required under this Contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied before the City will make final payment.
- 8.6 Notice of Action/Suit. Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractor's performance under this Contract.
- 8.7 Advertising. Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the City Manager.
- 8.8 City Logos/Marks. Contractor shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

- 8.9 Public Records. Contractor acknowledges all Contract documents provided to the City may be subject to disclosure pursuant to Arizona Public Records laws.

9. RIGHTS/REMEDIES

- 9.1 Right of Assurance. Whenever one Party to this Contract in good faith has reason to question the other Party's intent or ability to perform, that Party questioning performance may demand that the other Party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding Party may treat this failure as an anticipatory repudiation of the Contract.
- 9.2 Stop Work Order. The City may, at any time by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a Stop Work Order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 9.3 Non-Exclusive Remedies. The rights and remedies of the city under this Contract are non-exclusive.
- 9.4 Right of Offset. The City shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
- 9.5 Strict Performance. Failure of either Party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of goods or Services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of either Party to insist upon the strict performance of the Contract.

10. GENERAL PROVISIONS

- 10.1 Modification. No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the Parties with authority to do so.
- 10.2 Delegation and Assignment. No Party may delegate, assign, sublet or transfer any of its rights, or performance under this Contract, except with the prior written consent of the other Party which shall not be unreasonably withheld. Any purported assignment or delegation in violation of this Section is void.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

- 10.3 Third Party Beneficiary. Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City and the Contractor, and not for the benefit of any other Party.
- 10.4 Disputes, Governing Law, Attorney Fees. This Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action arising out of this Contract shall be commenced and maintained in Maricopa County Superior Court, Arizona. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the U.S. District Court located in Phoenix, Maricopa County, Arizona. The prevailing Party shall be reimbursed by the other Party for all attorney fees and all costs and expenses, including but not limited to all service of process, filing fees, court and court report costs, investigative costs, and expert witness fees which are incurred in any legal proceeding whatsoever arising out of this Contract, including, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing.
- 10.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Contract shall forthwith be physically amended to make such insertion or correction.
- 10.6 Entire Agreement. This Contract constitutes the entire agreement of the Parties and supersedes all previous representations, written or oral, with the respect to the subject matter, goods and Services specified herein. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded by this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the drafting Party. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.
- 10.7 Severability. If any provision in this Contract or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 10.8 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the following order:
1. Standard Terms and Conditions;
 2. Statement or Scope of Work;
 3. Solicitation, Instructions to Offerors (including other documents referenced or included);
 4. Offer;
 5. Fee Schedule/Price Sheet; and
 6. Attachments, Addendums and Exhibits



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

- 10.9 Independent Contractor. Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee, agent, subcontractor or subcontractor of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
- 10.10 Ambiguities Not Held Against Drafter. This Contract having been freely and voluntarily negotiated by all Parties and the rule of contract construction that ambiguities, if any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Contract.
- 10.11 Waiver. The delay or failure of either Party at any time to require performance of compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Contract shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence of event shall not be deemed a waiver of any right a waiver of any right or remedy in respect to any occurrence or event, nor shall any waiver constitute a continuing waiver.
- 10.12 Survival. The Parties agree that each Party shall remain obligated to the other Party under all provisions of this Contract that expressly or by their nature extend beyond and survive the expiration or termination of this Contract. This includes by way of example, but not limitation, the provisions addressing insurance, indemnification, warranties, damage, Information Technology Nondisclosure, and audit provisions.
- 10.13 Time is of The Essence. Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence. Contractor is providing Services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 10.14 Non-Exclusive Contract. Any subsequent Contract resulting from the solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City. Contractor acknowledges that the City may enter into agreements with other contractors to obtain the same or similar services that are the subject of this Contract or may have its own employees perform services similar to those services contemplated by the Contract.
- 10.15 Audit of Records. Contractor, and its subcontractors that perform any work under this Contract, shall retain all books, accounts, reports, files and any and all other records relating to the Contract for six (6) years after completion of the Contract and upon written request, shall make such records available to the City for review, inspection, and audit. Contractor shall deliver all records, at no cost to the City, to the Goodyear City Hall, 190 N. Litchfield Road, Goodyear, Arizona, or to such other City facility within the City as



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

designated by the City. If approved by City Attorney in writing, photographs, microphotographs, or other authentic reproductions may be maintained instead of original Contract Documents.

- 10.16 Audit/Billing and Expenses. The City reserves the right to request supporting documentation for all hourly amounts or reimbursable expenses charged to the City. Such records will be subject to audit at any time during the term of this Contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, Contractor will furnish to the City original invoices and payroll records to support all charges. The City reserves the right to audit all supporting evidence necessary to substantiate charges related to this Contract, both direct and indirect costs, including overhead allocations if they apply to hourly costs associated with this Contract. If requested by the City, Contractor will provide supporting records electronically in addition to a hard copy. If the audit reveals overcharge, the Contractor will reimburse the City upon demand for the amount of such overcharges plus interest thereon from the date paid by the City through the date of reimbursement. If the overcharges exceed 5% of Contractor's compensation, Contractor shall also reimburse the City for the cost of the audit. Contractor shall include this subsection in all contracts with subcontracts providing materials/Services for this Contract.
- 10.17 Cooperative Statement. This Contract shall be for the use of the City. In addition, political subdivisions, nonprofit organizations and public health institutions may in its discretion may participate (piggyback) at on this Contract if the Contractor agrees to do so.
- 10.18 Headings/Captions. Headings and captions appearing in this Contract have been inserted for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of this Contract or any provision hereof.
- 10.19 Conflict of Interest. This Contract is subject to cancellation by the City, without penalty or further obligations, pursuant to the provisions of A.R.S. § 38-511, as amended.
- 10.20 Notices. Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally delivered to the Party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified postage prepaid and properly addressed as follows:

To Contractor:

To City:
Walter Kinsler, RLA
Sr. Project Manager, Engineering



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

City of Goodyear
190 N. Litchfield Road
Goodyear, AZ 85338

Copy to:
City Attorney
City of Goodyear
190 N. Litchfield Road
Goodyear, AZ 85338

- 10.21 Modification or Waiver. Any changes, alterations, or modifications to this Contract, including agreed upon interpretation of meaning and other mutually agreed upon conditions provided for in this Contract, shall be made by written instrument executed by all Parties and adopted in the manner by which this Contract was adopted.
- 10.22 Counterparts. This Contract may be executed by the Parties in any number of separate counterparts, each of which when executed and delivered shall be deemed an original, and all such counterparts shall together constitute one original document. All signatures need not be on the same counterpart.
- 10.23 Authorization. Each Party warrants and represents that it has full power and authority to enter into and perform this Contract and the person signing on behalf of each Party has been properly authorized and empowered to enter this Contract. Each Party further acknowledges it has read this Contract, understands it, and agrees to be bound by it.
- 10.24 Electronic Signature. The signatures on this Contract may be an original signature, or an original signature that has been replicated by photocopy, electronic or other digital means or fax.

SECTION VIII – SPECIAL TERMS AND CONDITIONS

1. TERM OF CONTRACT

The term of this Contract shall be one (1) year commencing on the effective date, which is the date last signed by both Parties, and may be extended or renewed for consecutive additional one (1) year periods, not to exceed a total of five (5) years, subject to appropriations and mutual agreement of the Parties. The City has no obligation to extend or renew this contract, and any decision to do so is at the sole discretion of the City.

2. SUBSTITUTIONS OR EXCEPTIONS

The City reserves the option to not consider offers for award if the Offeror: i) takes any exception to the specifications and the City does not agree or accept the proposed changes; or ii) proposes a unit which does not meet the City's specifications exactly and the Contractor does not additionally propose the specified unit prior to RFQ opening, and the City rejects the alternative identified.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

3. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

4. **LATE OFFERS/MODIFICATIONS/WITHDRAWALS**

Offers, modifications of offers, and withdrawals received *after* the due date and time specified for receipt will be rejected and returned to the Contractor unopened. A Contractor (or designated representative) may withdraw their offer via email to the responsible Procurement Officer any time *prior* to the solicitation due date and time.

5. **PUBLIC RECORD/CONFIDENTIAL INFORMATION**

All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award. If the Contractor believes that any information provided throughout the procurement process should be withheld as confidential, it is the responsibility of the Contractor to submit to the Procurement Manager a statement when the confidential information is submitted which identifies those items the Contractor believes to be confidential and the legal reason(s) why they are confidential. The Procurement Manager shall review the request for confidentiality and advise the Contractor in writing if the information will be treated as confidential by the City. If the City receives a public records request for any of the information determined to be confidential by the Procurement Manager, the City will use reasonable efforts to give notice to the Contractor prior to the release of the information.

6. **OFFER ACCEPTANCE PERIOD**

In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid for one hundred twenty (120) days after the opening time and date.

7. **DISCUSSIONS**

The City reserves the right to conduct discussions with Contractors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the submittal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.

8. **PERSONNEL**

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of the work to be performed in this Solicitation. The Contractor agrees that those persons identified in their submittal shall not be removed or replaced without a written request to and approval from the City.

9. **AWARD OF CONTRACT**

9.1 The contract will be awarded pursuant to the provisions of the City of Goodyear Procurement Code. Unless the Contractor states otherwise, or unless provided within this solicitation, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. Notwithstanding any other provision of this solicitation, the Procurement Manager further



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

reserves the right to i) waive any immaterial defect or informality; ii) reject any or all offers, or portions thereof; iii) reissue the solicitation; or iv) modify or cancel this solicitation.

9.2 A response to a solicitation is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's solicitation and the written amendments thereto, if any. If City Council approval is necessary, offers do not become contracts unless and until they are accepted by the City Council. A contract is formed when written notice of award(s) is provided to the successful Contractor(s). The Contract has its inception in the award document, eliminating a formal signing of a separate contract.

9.3 In the event the City should receive two or more identical offers, the awardee will be determined by lottery.

10. **BUSINESS REGISTRATION PERMIT**

All Contractors awarded contracts with the City shall be required to obtain a City of Goodyear Business Registration Permit through the Goodyear Business Registration Office. For further information call Finance, Joe Lewandowski at (623) 882-7899 or joe.lewandowski@goodyearaz.gov

11. **PROTESTS**

11.1 Any interested party may protest a solicitation issued by the City or the proposed award or the award of a City Contract by submitting a request in writing with the Procurement Manager for the City of Goodyear, with a copy directed to the City Attorney for the City of Goodyear as follows:

Jacque Behrens, CPPB
Procurement Manager
City of Goodyear
P.O. Box 5100
190 North Litchfield Road
Goodyear, AZ 85338

Roric Massey
City Attorney
City of Goodyear
P.O. Box 5100
190 North Litchfield Road
Goodyear, AZ 85338

11.2 Writing: All protests must be in writing and shall include the following information:

11.2.1 The name, address and telephone number of the protester;

11.2.2 The signature of the protester or its representative;

11.2.3 The solicitation or contract number;

11.2.4 A detailed statement of the legal or factual grounds of the protest including copies of relevant documents; and

11.2.5 The form of relief requested. R3-4-16.01

11.3 Time Frame: To be considered, protests must be filed during the time frame identified in the procurement code.

11.3.1 Protests of a solicitation must be filed within five (5) days of the first advertising of the solicitation.

11.3.2 Protests of an award must be filed within ten (10) days of the issue date of the Notice of Award or Notice of Intent to Negotiate and Award.



City Of Goodyear

Request for Qualifications Construction Manager at Risk

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

11.4 The Procurement Manager is required to notify all interested parties that a protest has been filed.

12. CONFLICT OF INTEREST

Offerors shall fully disclose all known and potential conflicts that could influence or appear to influence their judgment or the quality of their services.

13. COOPERATION

In the event any claim or action is brought against the City relating to Contractor's Services, Contractor shall provide the City with any and all reasonable assistance and cooperation which the City may require or request.

14. TITLE AND RISK OF LOSS

Title and risk of loss of goods and Services shall not pass to the City until the City authorized personnel actually receives and accepts the goods or Services at the point of delivery; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming goods shall remain with the Contractor regardless of receipt.

15. ACCEPTANCE

All material and Services are subject to final inspection and acceptance by the City. Material or Services failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be rejected by the City. If returned or rejected, all costs are the responsibility of the Contractor.

16. BEST AND FINAL OFFERS

The City may request best and final offers if deemed necessary, and will determine the scope and subject of any best and final request.

17. BONDING

17.1 Contractor will be required to obtain necessary bonding at the time of entering into the GMP Construction Agreement. Bonding required will be as follows:

17.1.1 A performance bond for one hundred (100%) of the Contract price is required at the time of execution of the Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.

17.1.2 A payment bond for one hundred (100%) of the Contract price is required at the time of execution of this Contract and shall meet the requirements of A.R.S., Title 34, as amended, if applicable.

18. CONTINUATION OF SERVICES – ISRAEL

Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in a boycott of Israel, as that term is defines in A.R.S. § 35-393.



City Of Goodyear

Offer and Acceptance

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

DESCRIPTION OF SERVICES: GOODYEAR RECREATION CAMPUS PHASE I

OFFER

To the City of Goodyear: The undersigned Contractor hereby offers and agrees to furnish the goods and/or services in compliance with this Contract, as the term Contract is defined in this document.

By signing and submitting this Offer, Contractor certifies and warrants that Contractor: has read, understands and agrees to comply with the Contract as defined here; Contractor is qualified to perform all Services required herein; has no known, undisclosed conflict of interest; has not made an offer of any gift(s), payment(s) or other consideration to any City employee, elected official who has or may have had a role in the procurement process for this Contract; pursuant to A.R.S. § 41-4401, Contractor and its subcontractors will comply with all immigration laws and regulations that relate to its employees and A.R.S. § 23-214; and the signatory is an officer or duly authorized agent of the Contractor with full power and authority to submit binding offers for the goods and/or services as specified herein.

Arizona Transaction (Sales) Number:
City of Goodyear Business Registration No.:

Arizona Contractor License Number:
Privilege Tax License Number:

Sign:

Contractor's Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City State Zip Code

Title Date

Telephone

Email

ACCEPTANCE OF OFFER - CITY OF GOODYEAR

Contractor's Offer is hereby accepted and a Contract awarded by the City. Contractor is now bound to provide the goods and/or services as specified in Scope of Work of this Contract. Contractor shall not start any billable work or provide any material/services until the Contractor receives an executed purchase order or written notice to proceed.

City Manager, City of Goodyear (if applicable)

Attested by:

Maureen Scott, City Clerk
City Seal

Official File

Eff. Date: _____

Jacque Behrens, Procurement Manager Date

Approved as to form:

Roric Massey, City Attorney



City Of Goodyear

**Attachment A
Non Collusion Affidavit**

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845

**NON-COLLUSION AFFIDAVIT
GOODYEAR RECREATION CAMPUS PHASE I**

State of Arizona County of _____

_____, affiant,
the

(TITLE)

(NAME OF COMPANY)

The person, corporation or company responsible for the accompanying Request for Qualifications, having first been duly sworn, deposes and says:

That such Request for Qualifications is genuine and not sham or collusive, nor made in the interest of or on behalf of any person not herein named, and that the Contractor has not directly or indirectly induced or solicited any other Contractor to put in a sham submittal, or any other person, firm or corporation to refrain from submitting, and that the Contractor has not in any manner sought by collusion to secure for itself an advantage over any other Contractor.

(TITLE)

Subscribed and sworn to before me this

_____ Day of _____, 20_____

SIGNATURE OF NOTARY PUBLIC
IN AND FOR THE

COUNTY OF _____

STATE OF _____ My Commission Expires



City Of Goodyear

**Attachment B
Overall Site Plan**

Office of Procurement
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Phone: 623-882-7845





**GOODYEAR RECREATION CAMPUS PHASE I
SOLICITATION/CONTRACT NUMBER: 18-4150
(PROJECT NUMBER FY-1701)**

CONSTRUCTION MANAGER AT RISK AGREEMENT

Mayor

Georgia Lord

Council

Vice Mayor Wally Campbell

Joanne Osborne

Joe Pizzillo

Sheri Lauritano

Bill Stipp

Brannon Hampton

City Manager

Brian Dalke

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS.....2

ARTICLE 2 – BASIC DESIGN PHASE SERVICES.....6

ARTICLE 3 – PERIOD OF SERVICES.....13

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS13

ARTICLE 5 – CITY’S RESPONSIBILITIES15

ARTICLE 6 – CONTRACT CONDITIONS16

ARTICLE 7 - INSURANCE.....23

SIGNATURE PAGE26

EXHIBIT A - SCOPE OF SERVICE & DESIGN GMP.....27

EXHIBIT B – HOURLY RATE SCHEDULE28

GOODYEAR RECREATION CAMPUS PHASE I (PROJECT)
CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION PHASE SERVICES
CONTRACT NO. CON-18-4150, PROJECT NO. FY-1701

This Construction Manager at Risk agreement (“Agreement”) is between City of Goodyear, an Arizona municipal corporation (“City”) and _____, an _____ (“Construction Manager at Risk” or “CMAR”). The City and CMAR are collectively referred to in this contract as the “Parties” and each individually as a “Party.”

RECITALS

- A. The City desires to expand the treatment capacity of the City’s Goodyear Water Reclamation Facility and intends to construct **Goodyear Recreation Campus Phase I** (“Project”), as described in Exhibit A attached hereto.
- B. The City has entered into a contract with Kimley Horn (“Design Professional”) to provide professional engineering design for the Project.
- C. The City desires to enter into this contract for CMAR to provide services to assist City and Design Professional in developing an optimum design for the Project during the design phase and to ensure the successful construction of the project during the construction phase.

AGREEMENT

NOW THEREFORE, and in consideration of the mutual promises, terms, and conditions stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda means written or graphic instruments issued prior to the submittal of the Guaranteed Maximum Price (GMP) proposal(s), which clarify, correct or change the GMP proposal(s) requirements.

Agreement or Contract means this written document signed by the City and CMAR, including other documents itemized and referenced in or attached to and made part of this document.

Alternate Systems Evaluations means alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional project that meets City requirements.

Contract means this Professional Services Contract, including the standard terms and conditions, special terms and conditions, specifications/scope of work, fee schedule/price sheet, the solicitation documents, instructions to offerors (including documents referenced and included therein) and any attachments, exhibits and addendum referenced herein, the offer and any best and final offer as accepted by the City, and any amendments.

Contractor means the individual, partnership, entity, firm, company or corporation who, as a result of the competitive process, is awarded a contract by the City of Goodyear.

Change Order means a document signed by the CMAR and the City that authorizes an addition, deletion or revision in the scope of services or deliverables, or an adjustment in the contract amount or the period of services, or use of

owner contingency, and is issued on or after the effective date of this contract.

City or Owner means the City of Goodyear, an Arizona municipal corporation, with whom CMAR has entered into this contract and for whom the services are to be provided pursuant to this contract.

City's Project Manager means the person representing the City for all correspondence relating to the project.

CMAR ("Construction Manager at Risk" or "Contractor") means the person, firm, corporation or other approved legal entity with whom the City has entered into this Agreement.

Contingency, Contractor's means an agreed upon amount, either lump sum or a percentage of the cost of the work, that is included in the GMP and to be used by the CMAR in accordance with the general provisions in the construction contract. Generally, contractor's contingency recognizes that the drawings and specifications may still be less than 100% complete after the City's final acceptance of GMP.

Contingency, Owner's means the owner may, at its discretion, order changes in the scope of the project. The owner's contingency is an amount to cover changes initiated by the owner, which may be incorporated into the GMP as an allowance at the owner's discretion.

Construction Documents means collectively, the plans, specifications, details, drawings, change orders and other documents prepared by the design professionals that describe the scope of quality of the project and the materials, supplies, equipment, systems and any and all other elements required for construction of the work that are acceptable to the owner.

Construction Fee means the CMAR's administrative costs, home office overhead, and profit, whether at the CMAR's principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the general conditions for the construction phase.

Contract Documents means this contract, CMAR's formal response to the RFQ, general and special conditions of the contract, supplementary general conditions, the drawing and specifications, including all bulletins, change orders, addenda or other modifications of the drawings and specifications incorporated into the documents; the performance bond, the payment bond, insurances certifications, exhibits, attachments, and the Notice to Proceed for design phase services, and any other documents designated in this contract.

Contract Time(s) means the number of days or the dates related to the construction phase that as stated in construction documents applies to achievement of substantial completion and/or completion of the construction work so that it is ready for final payment.

Day(s) means calendar day(s) unless otherwise specifically provided in the contract documents.

Deliverables means the work products prepared by the CMAR in performing the scope of work described in this contract. Some of the major deliverables to be prepared and provided by the CMAR during the design phase may include but are limited to: Construction Management Plan, project schedule, schedule of values, alternative system evaluations, constructability reviews, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP proposals, subcontractor procurement plan, subcontractor agreements, subcontractor bid packages, supplier agreements, and others as indicated in this contract or required by the project team.

Design Professional means the qualified, licensed person, firm or corporation who furnishes design services required under the contract documents as identified by the City.

Drawings means the graphic and pictorial portions of the contract documents showing the design, location, and dimensions of the work, generally including plans, elevations, sections, details, schedules, and diagrams, excluding shop drawings.

General Condition Costs means and includes, but is not limited to, the following types of costs for the CMAR during the construction phase: payroll costs for project manager or construction manager (but not both) for work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in direct employ of the CMAR or subcontractors; taxes on the work and for which the CMAR is liable; and permit and license fees. Certain limitation and exclusions are described in the general conditions for the construction phase.

GMP Plans and Specification means the sets of plans and specifications provided pursuant to paragraph 2.7.3 upon which the Guaranteed Maximum Price proposal is based.

Guaranteed Maximum Price (GMP) Proposal means the CMAR's offer or proposal submitted on the prescribed form setting forth the GMP prices for the entire work or portions of the work to be performed during the construction phase. The GMP proposal(s) are to be developed pursuant to Article 2 of this agreement.

Litigation Expense means any court filing fee and costs, arbitration fees or costs, witness fee, arbitration fees, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Contract, including, without limitation, in each case, attorneys' fees, professional fees, disbursements and each other fee and cost of investigating and defending, appealing or asserting any claim for indemnification under this Contract.

Loss means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a litigation expense.

Notice to Proceed means a written notice given by the City to the CMAR fixing the date on which the CMAR shall start to perform the CMAR's obligations under this agreement.

Progress Payment Application means the form that is accepted by the City and used by the CMAR in requesting progress payments or final payment on which shall include such supporting documentation as is required by the contract documents and or the City.

Project means the scope of work as described in the recital above and "Exhibit A" project description attached hereto.

Project Team means design phase services team consisting of the design professional, CMAR, and City's project manager, City's client department's representatives, and other stakeholders who are responsible for making decisions regarding the project.

Samples means physical examples of materials, equipment, or workmanship representative of a part of the construction phase work and which establish the standards by which that portion of the construction phase work shall be evaluated.

Services "Work" or "Project" means the subject matter of this Contract as set forth in the Scope of Work.

Shop drawings means all drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CMAR and submitted by the CMAR to illustrate some portion of the work.

Specifications means the part(s) of the contract documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the

work and certain administrative details applicable thereto.

Subcontractor means an individual, firm or corporation having a direct contract with the CMAR or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase work at the site for which the CMAR is responsible. Subcontractors shall be selected through the Subcontractor bid process described in paragraph 2.8 of this agreement.

Subconsultant means a person, firm or corporation having a contract with CMAR to furnish services required as its independent professional associated or consultant with respect to the project.

Substantial Completion means the construction work, or an agreed upon portion of the construction work, that City has agreed to accept separately, and is sufficiently complete so that City can occupy and use the project or a portion thereof for its intended purposes.

Supplier means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CMAR or with any subcontractor to furnish materials or equipment to be incorporated in the construction phase work by CMAR or any subcontractor.

Total Float means the number of days by which the design phase services or construction phase work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the project schedule.

Work means the entire completed construction, or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the contract documents for the construction phase.

Work Product means but is not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar drawings, computer aided drafting and design (CADD) file, computer disks and/or other electronic records and media, and all “architectural work” and “works made for hire” as defined herein and by the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

- 2.1.1 The CMAR, to further the interests of the City, shall perform the services required by, and in accordance with this contract, to the satisfaction of the City’s project manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Goodyear, Arizona would exercise at such time and under similar conditions. The CMAR shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practices. The services provided under this agreement shall not alter any real property owned by the City.
- 2.1.2 Program Evaluation: As a participating member of the project team, the CMAR shall provide to the City and Design Professional at design submittal milestones (i.e. 30%, 60%, 90%, 100% design completion) a written evaluation of the City’s project program and project budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CMAR shall attend project team meetings which may include, but are not limited to, weekly, biweekly, or monthly project management meetings, project workshops, special project meetings, value engineering meetings, contract documents rolling reviews and partnering sessions.

- 2.1.4 The CMAR shall provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current drawings and specifications. The CMAR shall promptly notify the City in writing whenever the CMAR determines that any drawings or specifications are inappropriate for the project and/or cause changes in the scope of work requiring an adjustment in the cost estimate, project schedule, GMP proposal and/or in the contract time for the work, to the extent such are established.
- 2.1.5 The CMAR, when requested by the City, shall attend, make presentations, and participate as may be appropriate in public agency and or community meetings germane to the project, and shall provide drawings, schedule diagrams, budget charts and other materials describing the project when their use is required or appropriate in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CMAR shall prepare a Construction Management Plan ("CMP"), which shall detail but not necessarily be limited to the CMAR's determinations concerning: (a) project milestone dates and the project schedule, including the broad sequencing of the design and construction of the project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast tracking and/or phasing the construction, (d) the number of separate sub-agreements to be awarded to subcontractors and suppliers for the project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each project team member's responsibilities and roles.
- 2.2.2 The CMAR shall add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. Updates of the CMP may take into account (a) revisions in drawings and specifications; (b) the CMAR's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, design professional or the CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) a requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the "project schedule" is to identify, coordinate and record the tasks and activities to be performed by all the project team members and then for the project team to utilize the deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the project. Each project team member is responsible for its compliance with the project schedule requirements. The CMAR shall, however, develop and maintain the "project schedule" on behalf of and to be used by the project team based on input from the other project team members. The project schedule shall be consistent with the most updated CMP. The project schedule shall use the Critical Path Method (CPM) technique, unless the City requests otherwise in writing. The CMAR shall use scheduling software to develop a project schedule that is acceptable to the City. The project schedule shall be presented in graphical and tabular reports as agreed upon by the project team. If project phasing as described below is required, the project schedule shall indicated milestone dates for the phases. The project schedule's activities shall directly correlate with the Schedule of Values specified herein.
- 2.3.2 The CMAR shall include and integrate in the project schedule the services and activities required of the City, design professional and CMAR including all construction phase activities. The project schedule

shall detail activities to the extent required to show (a) the coordination between conceptual design and various design phase documents, (b) separate long-lead procurements, if any, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to subcontractors and suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed work by the City. The project schedule shall include by example and not limitation, proposed activity sequences and durations for design, preparation and procession of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases noting time sensitive activities (i.e. turf grow in, canal dry ups, etc), total float for all activities, relationships between activities, City's occupancy requirements showing portions of the project having occupancy priority, and proposed dates for substantial completion and when the work shall be ready for final acceptance.

- 2.3.3 The CMAR shall update and maintain the project schedule throughout the design phase to ensure that it shall not require major changes at the start of the construction phase to incorporate the CMAR's plan for the performance of the construction phase work. The CMAR shall provide updates and/or revisions to the project schedule for use by the project team, whenever required, but not less often than at the weekly, biweekly or monthly project team meetings as determined in the scope and design phase contract. The CMAR's updates/revisions shall include a narrative describing its analysis of the progress achieved to-date (as compared to the planned progress), any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.4 Project Phasing: If phased construction is deemed appropriate and the City and design professional approve, the CMAR shall review the design and make recommendations regarding the phased issuance of construction documents to facilitate phased construction of the work, with the objective of reducing the project schedule and/or cost of the work. The CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CMAR shall periodically evaluate the availability of labor, materials/equipment, and building systems; cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP proposals and/or the project schedule.
- 2.4.2 The CMAR shall identify, in conjunction with the project team, those additional surface and subsurface investigations that are required to provide the necessary information for the CMAR to construct the project. After completion of design phase services, the CMAR may provide additional investigation to improve the adequacy and completeness of the site condition information and data made available with the construction documents. The CMAR may be responsible for the time and cost required to obtain such additional investigations, except if otherwise provided by specific additional services.
- 2.4.3 The CMAR shall meet with the project team as required to review designs during their development. The CMAR shall be familiar with the evolving documents through the various design phases. The CMAR shall proactively advise the project team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and labor and material availability. The CMAR shall advise the project team of proposed site improvements, excavation and foundation considerations, as well as any concerns regarding coordination of the drawings and specifications. The CMAR shall proactively recommend cost effective alternatives throughout the project.
- 2.4.4 The CMAR shall routinely conduct constructability and bid ability reviews of the drawings and

specifications as necessary to satisfy the needs of the project team. The reviews shall attempt to identify all discrepancies and inconsistencies in the construction documents, especially those related to clarity, consistency, and coordination of work of subcontractors and suppliers.

- 2.4.5 Constructability Reviews: The CMAR shall evaluate whether (a) the drawings and specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the drawings and specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of work required by or inferable from the drawings and specifications are practicable, and (g) the design addresses efficiency issues such as access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar issues.
- 2.4.6 Bid ability Reviews: The CMAR shall check cross-references with complementary drawings and sections within the specifications, and in general evaluate whether (a) the drawings and specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well in similar installations, (c) the design provides as-built data, (d) specifications include alternatives in the event a requirement cannot be met in the field, and (e) the project is likely to be subject to differing site conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities, and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the work.
- 2.4.7 The CMAR shall provide the results of the constructability and bid ability reviews to the project team in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the drawings and specifications with notations and recommendations made on the drawings, specifications and other documents. If requested by the City, the CMAR shall meet with the project team to discuss and review reports.
- 2.4.8 The CMAR's constructability and bid ability reviews shall be from a contractor's perspective, and though it will serve to reduce the numbers of Requests for Information (RFIs) and changes during the construction phase, responsibility for the drawings and specifications shall remain with the design professional and not the CMAR.
- 2.4.9 Notification of Variance or Deficiency: It shall be the CMAR's responsibility to assist the design professional in ensuring that the construction documents are in accordance with all applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMAR recognizes that portions of the construction documents are at variance or deficient with reference to any applicable laws, statutes, ordinances, building codes, rules and regulations it shall promptly notify the project team in writing, describing the apparent variance or deficiency.
- 2.4.10 Alternate Systems Evaluations: Using value engineering principles, the project team shall routinely identify and evaluate alternate systems, approaches, and design changes that have the potential to reduce project costs while still delivering a quality and functional product. If the project team agrees, the CMAR, in cooperation with the design professional, shall perform a cost/benefit analysis of the alternative and submit it in writing to the project team. The project team will decide which alternatives will be incorporated into the project. The design professional shall have full responsibility for the incorporation of the alternatives into the drawings and specifications. The CMAR shall include the cost of the alternatives into the cost estimate and any GMP proposals.

2.5 COST ESTIMATES

- 2.5.1 Within fourteen (14) days after receipt of the documents for the various design phases, the CMAR

shall provide a detailed cost estimate review and a written review of the documents. The design professional and CMAR shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached the City shall make the final determination.

- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's project budget, the CMAR shall make appropriate recommendations on cost cutting ideas, methods or alternative materials to the project team that the CMAR believes will bring the project back into the project budget.
- 2.5.3 In addition to milestone estimates, the CMAR shall periodically provide a tracking report that identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the CMAR's responsibility to keep the project team informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 The CMAR shall provide the City with a preliminary "cash flow" projection based upon historical resources of similar projects to assist the City in the financing process at the time of the submittal of the GMP and at any other time requested by the City.

2.6 GUARANTEED MAXIMUM PRICE ("GMP") PROPOSALS

- 2.6.1 The proposed GMP for the entire work (or portions thereof) shall be presented in a format acceptable to the City. The City may request a GMP proposal for all or any portion of the project at any time during the design phase. Any GMP proposal submitted by the CMAR shall be based on and consistent with the current updated cost estimate at the time of the request and the associated estimates for construction costs, and include any clarifications or assumptions upon which the GMP proposal(s) are based.
- 2.6.2 GMP Proposals for the entire project shall be the sum of the maximum cost of the work, and include the CMAR's construction fee, general conditions fee, and contractor's contingency. The CMAR guarantees to complete the project at or less than the final approved GMP proposal amount (i.e. the contract amount for the construction phase contract) and agrees that it shall be solely responsible for any difference between the actual cost of work and that amount.
- 2.6.3 The CMAR, in preparing any GMP proposal, shall obtain from the design professional, three sets of signed, sealed, and dated plans and specifications (including all addenda). The CMAR shall prepare the GMP proposal in accordance with the City's request for GMP proposal requirements based on the most current completed plans and specifications at that time. The CMAR shall mark the face of each document of each set upon which its proposed GMP is based. The CMAR shall send one set of those documents to the City's project manager, keep one set, and return the third set to the design professional.
- 2.6.4 An updated project schedule shall be included with any GMP proposal that reflects the scope of work shown in the current set of design documents upon which the GMP proposal(s) is based. Any such project schedule updates shall continue to comply with the requirements of section 2.3.
- 2.6.5 In the event the CMAR elects, at its sole discretion, to maintain a contractor's contingency allowance within the GMP, the criteria for development of that allowance must be acceptable to the City. The terms and conditions regarding use of that allowance during the construction phase shall be established by the City and reflected in the contract for that phase of the project.
- 2.6.6 If the construction contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the CMAR shall revert to the City.

2.7 GMP PROPOSAL(S) REVIEW AND APPROVAL

- 2.7.1 The CMAR shall meet with the project team to review each GMP proposal and the written statement of its basis. In the event the project team discovers inconsistencies or inaccuracies in the information presented, the CMAR shall make adjustments as necessary to the GMP proposal, its basis, or both.
- 2.7.2 The City, upon receipt of any GMP proposal from the CMAR, may submit the same documents that were used by the CMAR in developing its GMP to an independent third party or to the design professional for review and verification. The third party (or design professional) will develop an independent estimate of the cost of work and review the project schedule for the associated scope of the GMP proposal.
- 2.7.3 If the CMAR's GMP proposal is greater than the independent third party estimate, the City may require the CMAR to reconfirm its GMP proposal. The CMAR shall accept the independent third party's estimate for the cost of work as part of its GMP or present a report within seven (7) days of a written request to the City identifying, explaining and substantiating the differences. The CMAR may be requested to, or may at its own discretion, submit a revised GMP proposal for the City's consideration. At that time the City may do one of the following:
- (a) Accept the CMAR's original or revised GMP proposal, if within the City's budget, without comment;
 - (b) Accept the CMAR's original or revised GMP proposal that exceeds the City's budget, and indicate in writing to the CMAR that the project budget has been increased to fund the difference; or
 - (c) Reject the CMAR's original or revised GMP proposal because it exceeds the City's budget or the independent third party's estimate; in which event, the City may terminate this contract and/or elect to not enter into a separate contract with the CMAR for the construction phase associated with the scope of work reflected in the GMP proposal.
- 2.7.4 If during the review and negotiation of GMP proposals design changes are required, the City shall authorize and cause the design professional to revise the construction documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP proposal. Such revised construction documents shall be furnished to the CMAR. The CMAR shall promptly notify the project team if any such revised construction documents are inconsistent and with the agreed-upon assumptions and clarifications.

2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 2.8.1 Prior to submission of a GMP, the CMAR may select subcontractors and major suppliers based on qualifications only or by competitive bid.
- (a) Selection by qualifications only: The City may approve the selection of a subcontractor or major supplier based only on their qualifications when the City agrees that it is in the project's best interest and approves the selected subcontractor or major supplier. Qualification-based selection of subcontractors and major suppliers may only occur prior to the submittal of the GMP proposal.
 - (b) The CMAR shall prepare a subcontractor / major supplier selection plan and submit the plan to the City for approval. The CMAR shall apply the plan in the evaluation of the qualification of a subcontractor or major supplier and provide the City with its review and recommendation.
 - (c) The CMAR shall negotiate costs for services/supplies from each subcontractor and major supplier selected under this method.

2.8.2 Selection by competitive bid and qualifications: All work shall be competitively bid unless a subcontractor or major supplier was selected by qualifications only. Competitive bids may occur prior to or after the GMP proposal(s).

(a) The CMAR shall develop subcontractor or major supplier interest; submit the names of a minimum of three qualified subcontractors or major suppliers for each trade in the project to the City for approval; and solicit bids from various work categories. If there are not three qualified subcontractors or major suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMAR may request the City's approval to submit less than three names. No change in the City-approved subcontractors and major suppliers shall be allowed without the City's prior written approval.

(b) If the City objects to any nominated subcontractor or major supplier, or to any self-performed work for good reason, the CMAR shall nominate a substitute subcontractor or major supplier.

2.8.3 The CMAR shall distribute drawings and specifications, and when appropriate, conduct a prebid conference with prospective subcontractors and major suppliers.

2.8.4 If the CMAR desires to self-perform certain portions of the work, it shall request to be one of the approved subcontractor bidders for those specific bid packages. The CMAR's bid shall be evaluated in accordance with the process identified below. If events warrant, and the City agrees, the CMAR may self-perform work without bidding or re-bidding the work to ensure compliance with the project schedule and/or cost.

2.8.5 The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects; qualifications and experience of personnel assigned; quality management plan; approach or understanding of the work to be performed; and performance schedule to complete the work. The final evaluation of subcontractor and major supplier bids shall be done with a City representative in attendance to observe and witness the process. The CMAR shall resolve any subcontractor or major supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the work.

2.8.6 Within fifteen (15) days after subcontractor or major supplier bid opening, the CMAR shall prepare a list of recommended subcontractors or major suppliers for each category of work for the City's review and approval. For each sub-agreement, the list shall detail (a) the amount of the subcontractor bid or major supplier and the corresponding subcontractor or major supplier; (b) the sum of subcontractor or major supplier bids received for all intended sub-agreements; and (c) the type and cost of trade work that the CMAR intends to self-perform, if any.

2.8.7 Upon prior City approval of all subcontractors and/or major suppliers, the CMAR shall submit a summary report to the City of the selection process. The report shall indicate the subcontractors and/or major suppliers contacted to determine interest, the subcontractors and/or major suppliers solicited, the bids received and costs negotiated, and the recommended subcontractors and/or major suppliers for each category of work.

2.8.8 The approved subcontractors and major suppliers shall provide a schedule of values with their bid proposals, which shall be used to create the overall project schedule of values.

2.8.9 If after receipt of sub-bids or after award of subcontractors and/or major suppliers, the City objects to any

nominated Subcontractor or to any self-performed work for good reason, the CMAR shall nominate a substitute subcontractor or major supplier from the list of subcontractors and/or major suppliers who submitted bids for the work affected, if such option is still available. Once the City approves the substitute subcontractors and major suppliers, the CMAR's proposed GMP for the work or portion thereof shall be correspondingly adjusted to reflect any higher or lower costs from such substitution.

- 2.8.10 After receipt of the Notice of Intent to Award, the City shall promptly conduct a pre-award conference with the CMAR and other project team members. At the pre-award conference the CMAR shall (a) review the nominated slate of subcontractors and/or major suppliers and discuss any City concerns with or objections to the nominated subcontractors and/or major suppliers; (b) discuss City concerns relating to any proposed self-performed work; (c) review the CMAR's proposed contract price for the work during the construction phase; (d) discuss the conditions, if any, under which the City shall agree to leave any portion of the remaining contractor's contingency within the contract price for the construction phase work; (e) resolve possible time frames for the date of commencement of the contract time for the construction phase of the work; (f) schedule the pre-construction conference; and (g) discuss any other matters of import.

ARTICLE 3 – PERIOD OF SERVICES

3.1 PERIOD OF SERVICES

- 3.1.1 The design phase services described in this contract shall be performed by the CMAR in accordance with the most current updated project schedule. The CMAR's failure to adhere to the project schedule requirements for activities for which it is responsible shall be sufficient grounds for termination of the contract by the City.
- 3.1.2 If the date of performance of any obligation or the last day of any time period provided for herein falls on a Saturday, Sunday, or a City recognized holiday, then the performance obligation shall be due and owing on the first day thereafter which is not a Saturday, Sunday or City-recognized City holiday. Except as otherwise provided herein, any required performance shall be timely made if completed no later than 5:00 p.m. (Arizona time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the design phase services fee proposal submitted by the CMAR and accepted by the City (which by reference is made a part of this contract) the City shall pay the CMAR a fee not to exceed negotiated amount dollars as follows:

For the basic services described in Article 2, the CMAR shall receive a fee not to exceed:

\$ _____

Additional Services and allowances, as described in subsection 4.3:
Blue Print and Document printing

\$ _____

Total contract amount

\$ _____

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CMAR for design phase services shall be submitted to the City on an "Application and Certificate for Payment" form and shall be accompanied by a progress report, and detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum,

a narrative description of tasks accomplished during the billing period, a listing of any deliverables submitted, and copies of any subconsultants' requests for payment, plus similar narrative and listings of deliverables associated with their work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee shall be paid in accordance with the work effort expended on that service in the preceding month.

- 4.2.2 The fees for the CMAR and any subconsultants shall be based upon the hourly rate schedule included as Exhibit B attached.
- 4.2.3 The CMAR shall pay all sums due subconsultants for services and reimbursable expenses within fourteen (14) days after the CMAR has received payment for those services from the City.
- 4.2.4 The CMAR agrees that it will not submit charges or claims for costs or damages of any type for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this agreement. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. The City does not waive any of its legal rights by agreeing to extend the time for the CMAR to complete any services in whole or in part.
- 4.2.5 All compensation paid to the CMAR shall be in accordance with Arizona law, including Title 34 of the Arizona Revised Statutes.
- 4.2.6 If any service(s) executed by the CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CMAR, the CMAR is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 The following additional services shall be required for the successful completion of the project. Mark-ups are not authorized and only the reimbursable items specifically identified below shall be reimbursable:
 - 4.3.1.1 If not available within the CMAR's staff, CMAR shall secure services of a qualified individual or firm to provide design plan and specifications review as required. The CMAR shall forward invoices from the individual or firm to the City for payment of costs. The cost of such services shall not exceed \$_____ without prior written approval of the project manager.
 - 4.3.1.2 If approved by the City, CMAR shall secure the services of a qualified cost estimating person or firm to provide cost estimating services required under this agreement. The CMAR shall forward copies of the invoices from the cost estimator to the City with the CMAR's payment request. The cost for such services shall not exceed \$_____ without prior written approval of the project manager.
 - 4.3.1.3 If approved by the City, the CMAR shall provide services related to evaluations of and recommendations for long lead-time procurements to meet the project schedule requirements. The cost for such services shall not exceed \$_____ without prior written approval of the project manager.
 - 4.3.1.4 When previously authorized by the project manager in writing, the CMAR shall be entitled

to reimbursement at cost of design phase services related expenses incurred for the following items:

- (a) Reasonable charges for air transportation, ground travel, authorized expenses while traveling shall be reimbursable in accordance with the GSA Travel Management Policies. The CMAR shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed \$_____ without prior written approval of the project manager.
- (b) Long-distance telephone and long-distance facsimile costs incurred on behalf of the project shall be reimbursed. These costs shall not exceed \$_____ without prior written approval of the project manager.
- (c) Non-overhead printing expenses incurred including the printing of construction documents for bidding, courier services or other project-related services that may be requested by the City. The cost of such service shall not exceed \$_____ without prior written approval of the project manager.

ARTICLE 5 – CITY’S RESPONSIBILITIES

5.1 CITY RESPONSIBILITIES

5.1.1 The City, at no cost to the CMAR, shall furnish the following information:

- 5.1.1.1 One copy of data the City determines pertinent to the work. However, the CMAR shall be responsible for searching the records and requesting information it deems reasonably necessary for the project.
- 5.1.1.2 All available data and information pertaining to relevant policies, standards, criteria, and studies.
- 5.1.1.3 The name of the City employee or City’s representative who will serve as project manager during the term of this agreement. The project manager has the authority to administer this contract and monitor the CMAR’s compliance with all terms and conditions stated herein. The project manager has the authority to approve the project budget and project schedule. All requests for information from or decisions by the City on any aspect of the work or deliverables shall be directed to the project manager.
- 5.1.1.4 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the project. The scope of services for the design professional shall be provided to the CMAR for its information. The CMAR shall have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and design professional.
- 5.1.1.5 Supply all available copies of programs, reports, drawings, and specifications reasonably required by the CMAR.
- 5.1.1.6 Give written notice to the CMAR when the City becomes aware of any default or defect in the project or non-conformance with the drawings and specifications.
- 5.1.1.7 Notify the CMAR of changes affecting the budget allocations.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 City ownership of project documents: All work product (electronically or manually generated) including but not limited to cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this contract (collectively referred to as project documents) shall be the property of the City and are to be delivered to the project manager before the final payment is made to the CMAR. Nonetheless, in the event these project documents are altered, modified or adapted without the consent of the CMAR, which consent the CMAR shall not unreasonably withhold, the City agrees to hold the CMAR harmless to the extent permitted by law, from any liability arising out of or resulting from the City's alteration, modification or adaptation of the project documents.
- 6.1.2 CMAR to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CMAR, its subconsultants or personnel, during the course of performing this contract or arising out of the project shall belong to the CMAR.
- 6.1.3 License to City for Reasonable Use: The CMAR hereby grants, and shall require its subconsultants to grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the project documents, works or deliverables developed or created for the project and this contract. This license shall also include the making of derivative works.
- 6.1.4 Documents to Bear Seal: When applicable and required by Arizona law, the CMAR and its subconsultants shall endorse by an Arizona professional seal all plans, works and deliverables prepared by them for this contract.
- 6.1.5 City Marks/Logos: All City trade names, trademarks, service marks, websites, and/or logos belong to the City and may not be used in any advertising, promotions, or otherwise, without the prior written consent of the City.

6.2 COMPLETENESS AND ACCURACY OF CMAR'S WORK

- 6.2.1 The CMAR shall be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase deliverables prepared or compiled pursuant to its obligations under this contract and shall at its sole own expense correct its work or deliverables to the City's sole satisfaction. The fact that the City has accepted or approved the CMAR's work or deliverables shall in no way relieve the CMAR of any of its responsibilities under the contract, nor does this requirement to correct the work or deliverables constitute a waiver of any claims or damages otherwise available by law to the City.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of work or a deliverable results in a substantial change to the character of the work under the contract, thereby materially increasing or decreasing the scope of services, cost of performance, or project schedule, the work or deliverable shall nonetheless be performed as directed by the City. However, before any altered or modified work begins, a change order or amendment shall be approved and executed by the City and the CMAR. Such change order or amendment shall not be effective until approved by the City in writing. In the event of additions to, modifications of, or deletions from the project, the compensation to be paid to the CMAR may accordingly be adjusted by the prior mutual agreement of the contracting Parties. No

claim for extra work done or materials furnished by the CMAR shall be allowed by the City except as provided herein, nor shall the CMAR do any work or furnish any material(s) not covered by contract unless such work or material is first authorized in writing by the project manager. Work or material(s) furnished by the CMAR without prior written authorization shall be at the CMAR's sole cost and expense, and the CMAR hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished shall be made.

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in the contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CMAR in the performance of this contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the CMAR's performance of this contract are confidential, proprietary information belonging to the City.
- 6.4.3 The CMAR shall not divulge data to any third party without the prior written consent of the City. The CMAR shall not use the data for any purposes except to perform the services required under this contract. These prohibitions shall not apply to the following data provided the CMAR has first given the required notice to the City:
 - 6.4.3.1 Data which was known to the CMAR prior to its performance under this contract unless such data was acquired in connection with work performed for the City;
 - 6.4.3.2 Data which was acquired by the CMAR in its performance under this contract and which was disclosed to the CMAR by a third party, who to the best of the CMAR's knowledge and belief, had the legal right to make such disclosure and the CMAR is not otherwise required to hold such data in confidence; or
 - 6.4.3.3 Data which is required to be disclosed by the CMAR by virtue of law, regulation, or court.
- 6.4.4 In the event the CMAR is required or requested to disclose data to a third party, the CMAR shall first notify the City project manager of the request or demand for data. The CMAR shall timely give the City sufficient facts to give the City a meaningful opportunity to consent to the disclosure or to take action that the City deems appropriate to protect the data from disclosure.
- 6.4.5 Within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the City the CMAR shall deliver a copy of all related data to the City. All data shall continue to be subject to the confidentiality agreements of this contract.
- 6.4.6 The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CMAR, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm.

6.5 PROJECT STAFFING

- 6.5.1 Prior to the start of any work, the CMAR shall submit to the City an organization chart for the CMAR's staff and subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be performing the services

under the contract. In the event the CMAR desires to change any key personnel, the CMAR shall submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel shall include, but are not limited to, principal-in-charge, project manager, superintendent, project director and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

- 6.5.2 The CMAR shall maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this contract throughout the period of those services. If the City objects to any of the CMAR's staff based on reasonable cause, the CMAR shall take prompt corrective action acceptable to the City and, if required, remove such personnel from the project and replace with new personnel acceptable to the City.

6.6 SUBCONSULTANTS

- 6.6.1 Prior to the beginning the work, the CMAR shall provide the City with the names of all subconsultants to be used on this project for the City's approval. Subsequent changes in subconsultants shall be subject to the City's approval.
- 6.6.2 If the City objects to any of the CMAR's subconsultants based on reasonable cause, the CMAR shall take prompt corrective action acceptable to the City and, if required, remove such personnel from the project and replace with new personnel acceptable to the City.

6.7 INDEPENDENT CONTRACTOR

- 6.7.1 The CMAR is and shall be an independent contractor and whatever measure of control the City exercises over the work performed pursuant to the contract shall be as to the results of the work only. No provision in this contract shall give or be construed to give the City the right to direct the CMAR as to the details of accomplishing the work. Each Party shall act in its individual capacity and not as an agent, employee, partner, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever.

6.8 TERMINATION

- 6.8.1 The City reserves the right, at its sole discretion and without cause, to terminate or abandon any or all services provided for in this contract or terminate or abandon any portion of the project for which any services have been performed by the CMAR upon thirty (30) days written notice to the CMAR.
- 6.8.2 In the event the City terminates any or all of the services or any part of the services, upon receipt of written notice of the termination the CMAR shall immediately discontinue work and take all reasonable steps to minimize the incurrence of costs allocable to the work under this contract.
- 6.8.3 The CMAR, upon such termination, shall promptly deliver to the City all reports, estimates and other work or deliverables entirely or partially complete, together with all unused materials supplied by the City.
- 6.8.4 The CMAR shall appraise the work completed and submit an appraisal to the City for evaluation. The City shall have the right to inspect the CMAR's work or deliverable to appraise the work completed.
- 6.8.5 The CMAR shall receive compensation in full for services satisfactorily performed to the date of such termination. The fee shall be paid in accordance with Article 4 of this contract, and shall be an amount mutually agreed upon by the CMAR and the City. If there is no mutual agreement, the final determination shall be made in accordance with paragraph 6.9, "Disputes." However, in no event shall the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3,

“Alteration in Character of Work.” The City shall make the final payment within sixty (60) days after the CMAR has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

6.9.1 In any unresolved dispute arising out of an interpretation of this contract or the duties required therein, the final determination at the administrative level shall be made by the Procurement Manager.

6.10 WITHHOLDING PAYMENT

6.10.1 The City reserves the right to withhold funds from the City’s progress payments up to the amount equal to the claims the City may have against the CMAR, until such time that a final settlement on those claims has been reached.

6.11 RECORDS/AUDIT

6.11.1 Records of the CMAR’s direct personnel payroll, reimbursable expenses pertaining to this project and records of accounts between the City and CMAR shall be kept on a generally recognized accounting basis. The City and its authorized representatives reserve the right to audit the CMAR’s records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this contract and any change orders. The City reserves the right to decrease the contract amount and/or payments made on this contract if, an audit of the CMAR’s records shows that the CMAR has provided false, misleading or inaccurate cost and pricing data.

6.11.2 The CMAR shall include a provision similar to paragraph 6.11.1 in all of its agreements with subconsultants, subcontractors, and suppliers providing services under this contract to ensure the City and its authorized representatives have access to the subconsultants, subcontractors, and suppliers’ records to verify the accuracy of cost and pricing data. The City reserves the right to decrease the contract amount and/or payments made on this contract if the above provision is not included in subconsultants, subcontractor, and supplier’s contracts, or if one or more of those parties does not allow the City to audit its records to verify the accuracy and appropriateness of pricing data.

6.12 NOTICES

6.12.1 Unless otherwise provided herein, all notices and demands under this contract shall be in writing and shall be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the postmarked date if sent by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	Roric Massey, City Attorney City of Goodyear 190 N. Litchfield Road Goodyear, Arizona 85338
To CMAR	
To Design Professional:	Kimley Horn Engineer of Record 7740 N 16 th Street Phoenix, Arizona 85020
Copy to:	Walter Kinsler, RLA Senior Project Manager City of Goodyear 190 N Litchfield Road Goodyear, Arizona 85338

6.13 COMPLIANCE WITH FEDERAL LAWS

6.13.1 Non-Discrimination/Compliance with Applicable Law: The CMAR agrees that it shall not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in carrying out the terms of the contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354. The CMAR agrees to comply with all applicable provisions of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, and Arizona Executive Order 2009-09. The CMAR agrees to comply with these and all other federal laws in performing this contract and to permit the City to verify such compliance.

6.14 CONFLICT OF INTEREST

6.14.1 To evaluate and avoid potential conflicts of interest, the CMAR shall provide written notice to the City of any work or services performed by the CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice shall be given seven (7) business days prior to commencement of the project by the CMAR for a third party, or seven (7) business days prior to an adverse action as defined below.

6.14.2 Actions considered to be adverse to the City under this contract include but are not limited to:

6.14.2.1 Using data as defined in the contract, acquired in connection with this contract to assist to third party in pursuing administrative or judicial action against the City;

6.14.2.2 Testifying or providing evidence on behalf of any person in connection with administrative or judicial action against the City;

6.14.2.3 Using data to produce income for the CMAR or its employees independently of performing the services under this contract, without the prior written consent of the City.

6.14.3 The CMAR represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CMAR under this contract are not expected to create an

interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

6.14.4 The CMAR's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of this contract.

6.14.5 The CMAR acknowledges that this contract is subject to cancellation by the City pursuant to Arizona Revised Statutes Section 38-511.

6.15 CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE

6.15.1 Prior to award of the contract, the CMAR must provide to the City project manager its contractor's license classification and number, its City of Goodyear privilege license number, its Federal Tax I.D. number and its City of Goodyear business registration verification.

6.16 SUCCESSOR AND ASSIGNS

6.16.1 The City and the CMAR shall each bind itself, and its partners, successors, assigns, and legal representatives to the other party to this contract and to the partners, successors, assigns, and legal representatives of the other party in respect to all covenants of this contract. Neither the City nor the CMAR shall assign, sublet, or transfer its interest in this contract without the prior written consent of the other. Any assignment, sublet or transfer without the prior consent of the City shall be void. In no event shall any contractual relationship be created or be construed to be created between any third party and the City.

6.17 THIRD PARTY BENEFICIARY

6.17.1 This contract shall not be construed to give any rights or benefits in the contract to anyone other than the City and the CMAR. All duties and responsibilities set forth in this contract shall be for the sole and exclusive benefit of the City and the CMAR and not for the benefit of any other party.

6.18 FORCE MAJEURE

6.18.1 Neither Party shall be in default by reason of any failure in performance of this contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of the Party including, but not limited to unforeseeable acts of God, terrorism, or other acts of public enemy, war, and epidemics or quarantine restrictions.

6.18.2 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party of the delay in writing and as soon as practical, and shall specify the causes of such delay in the notice. The notice shall specifically refer to this provision. The delayed party shall commence work as soon as practicable and shall notify the other party in writing when it has done so. The time for completion of work shall be extended by contract modification for a period of time equal to the time that the effects of the force majeure prevented the delayed party from performing in accordance with this contract.

6.19 COVENANT AGAINST CONTINGENT FEES

6.19.1 The CMAR warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City has any interest, financially or otherwise, in the CMAR. In the event of a breach or violation of this warranty, the City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract amount or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

6.20 NON-WAIVER PROVISION

6.20.1 The failure of either party to enforce any of the provisions of this contract shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the contract or any part thereof or the right of either party to thereafter enforce each and every provision.

6.21 JURISDICTION

6.21.1 Jurisdiction/Attorney Fees: This contract shall be governed, construed and interpreted under the laws of the State of Arizona without regard to conflict or choice of law provisions. Any action to enforce any provision of this contract or to obtain any remedy hereunder shall be brought in the Superior Court, Maricopa County, Arizona. The prevailing party, whether by settlement or trial, shall be entitled to reasonable attorney fees and costs, in addition to any other available remedies. This provision shall survive the termination of this contract.

6.22 SURVIVAL

6.22.1 All warranties, representations and indemnifications made or agreed to by the CMAR shall survive the termination of this contract.

6.23 MODIFICATION

6.23.1 No supplement, modification, or amendment of any term of this contract shall be deemed binding or effective unless there is prior written consent signed by the Parties with authority to do so.

6.24 SEVERABILITY, CONFLICT LANGUAGE

6.24.1 If any provision of this contract to any person or circumstances is determined to be invalid, illegal or unenforceable to any extent, the remainder of this contract shall not be affected and shall be enforceable to the fullest extent permitted by law.

6.24.2 All work or deliverables performed shall conform to all applicable federal, state and local laws, codes, ordinances, rules, requirements and contract terms.

6.24.3 Contract Order of Precedence: In the event of a conflict in the provisions of the contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:

1. Standard Terms and Conditions;
2. Statement or Scope of Work;
3. Solicitation, Instructions to Offerors (including other documents referenced or included);
4. Offer;
5. Fee Schedule/Price Sheet; and
6. Attachments, Addendums and Exhibits

6.25 TIME IS OF THE ESSENCE

6.25.1 Time of each of the terms, covenants, and conditions of this contract is hereby expressly made of the essence. The City is providing services that involve the health, safety, and welfare of its citizens and the general public, and delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the CMAR.

6.26 COOPERATION AND FURTHER DOCUMENTATION

- 6.26.1 The CMAR agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this contract.

6.27 GENERAL

- 6.27.1 E-Verify: The CMAR warrants its compliance with the e-verify statute, A.R.S. § 23-214(A), and shall require and ensure that each of its subcontractors comply with A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of this contract, and shall subject the CMAR to penalties up to and including termination of the contract. The City retains the right to inspect the records of any of the CMAR's employees and its subcontractors' employees working on the contract to verify compliance with this requirement.

ARTICLE 7 – INSURANCE

7.1 INSURANCE REQUIREMENTS

- 7.1.1 The CMAR shall procure insurance coverage as described in section 7.2 against claims for injury to persons or damage to property which may arise from or in connection with this contract by the CMAR and its agents, representatives, employees, subconsultants, subcontractors, and suppliers. The obligation to procure and maintain insurance continues until all of the CMAR and its subconsultants, subcontractors, and supplier's obligations under the contract have been discharged, including any warranty periods. The CMAR shall cause all subcontracts to contain identical terms and conditions to those included in this Article.
- 7.1.2 The insurance requirements are minimum requirements for this contract. The City in no way warrants that the minimum requirements set forth herein are sufficient to protect the CMAR from liabilities that might arise out of the performance of the work under the contract by the CMAR, and its agents, representatives, employees, subconsultants, subcontractors, and employees. The CMAR is free to purchase such additional insurance as it may determine necessary. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this contract.

7.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

- 7.2.1 Without limiting any of its obligations or liabilities, the CMAR, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed by the State of Arizona, Department of Insurance, and in a form reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A- and a category rating of not less than VIII. Use of alternative insurers requires prior approval from City. Insurance provided by CMAR shall be primary.

7.2.1.1 General Clauses

- 7.2.1.1.1 **Additional Insured.** Except for Workers' Compensation and Employer's Liability coverage, the City and its agents, representatives, directors, officials, employees, and officers shall be named as additional insureds on all policies for insurance coverage required by this contract.

- 7.2.1.1.2 **Coverage Term.** All insurance required herein shall be maintained in full force and effect until work required to be performed under the terms of the contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this contract, at the sole discretion of the City.
- 7.2.1.1.3 **Primary Coverage.** The CMAR's insurance, except Worker's Compensation and Professional Liability, shall be primary insurance. Any insurance carried by the City shall be excess coverage and not contributory coverage to that provided by the CMAR.
- 7.2.1.1.4 **Claim Reporting.** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- 7.2.1.1.5 **Waiver.** The policies, except Workers' Compensation and Professional Liability, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officials, employees, and officers for any claims arising out of the work of the CMAR. The City does not waive subrogation on Workers' Compensation.
- 7.2.1.1.6 **Deductible/Retention.** The policies may provide coverage which contains deductibles or self-insured retentions. The CMAR shall be solely responsible for any deductible and/or self-insured retentions. If required by the City, the CMAR shall post a performance bond equal to the deductible or self-insured retention.
- 7.2.1.1.7 **Certificates of Insurance.** Prior to commencing services under this contract, the CMAR shall furnish the City with Certificates of Insurance and additional insured endorsements, issued by CMAR'S insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this contract are in full force and effect and that the City is endorsed as an additional insured. These documents shall identify this contract number and shall provide for not less than thirty (30) days advance Notice of Cancellation, Termination, or Material Alteration. Such certificates shall be sent directly to Walt Kinsler, RLA, Sr. Project Manager. City of Goodyear, 190 N Litchfield Road, PO Box 5100, Goodyear, Arizona 85338.

7.2.2 Workers' Compensation/Employer's Liability

- 7.2.2.1 The CMAR shall maintain Workers' Compensation/Employer's Liability insurance to cover obligations imposed by federal and state statutes having jurisdiction over CMAR's employees engaged in the performance of the services.
- 7.2.2.2 The CMAR shall require all subcontractors to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by CMAR.

7.2.3 Automobile Liability. The CMAR shall maintain automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the CMAR services. Coverage shall be at least as broad as coverage Code 1 "any auto" (Insurance Service Office policy form CA 0001 1/87 or any replacement thereof).

7.2.4 Commercial General Liability. The CMAR shall maintain commercial general liability insurance with an unimpaired limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for premises-operations, products-completed operations, contractual liability, bodily injury and property damage, but shall not be limited to the liability

assumed under the indemnification provisions of this contract. Coverage shall be at least as broad as Insurance Service Office policy form CG 00 01 04 13 or any replacement thereof. The Certificate of Insurance for the commercial general liability policy shall expressly cover CMAR's indemnification obligations set forth in this contract. The general liability insurance policy may not be written on a "claims made" basis.

- 7.2.5 **Professional Liability.** The CMAR shall maintain professional liability insurance covering negligent errors and omissions arising out of the services performed by the CMAR and any of its employees, with an unimpaired limit of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, or 10% of the construction budget, whichever is greater. The CMAR shall require each subcontractor to secure and maintain Professional Liability insurance sufficient for the protection of the portion of the work to be performed by such subcontractor on the same basis as above. The compilation of the total required insurance coverage under this paragraph shall remain the responsibility of CMAR.
- 7.2.6 **Umbrella/Excess Liability.** The CMAR shall maintain umbrella/excess liability insurance with an unimpaired limit of not less than \$5,000,000 per occurrence combined limit bodily injury and property damage, that "follows form" and applies in excess of the commercial general liability, automobile liability, and employer's liability as required above.
- 7.2.7 **Pollution Liability.** The CMAR shall maintain pollution liability insurance with a \$1,000,000 combined single limit each occurrence and \$2,000,000 combined single limit in the aggregate, and that provides coverage for sudden and accidental pollution damage to the environment by the CMAR while involved in the handling of hazardous substances.

7.3 INDEMNIFICATION

- 7.3.1 **Personal Injury and Property Damage Claims:** The CMAR agrees to indemnify, defend, and hold harmless the City (including its officials, officers, agents and employees) from all suits, actions, loss, damage, expense, costs or claims, of any character or any nature (including attorney's fees and costs of litigation), attributable to bodily injury, sickness, disease, death, or injury to or destruction arising out of, or alleged to have arisen out of, any negligent act, omission or work done by the CMAR and/or its employees, subcontractors and/or subconsultants, in fulfillment of the terms of this contract. The CMAR further agrees to indemnify, defend, and hold harmless the City (including its officials, officers, agents and employees) from any claim or amount giving rise to a recovery under worker's compensation laws, or arising out of the failure of the CMAR (and/or its employees, subcontractors and/or subconsultants) to conform to applicable and appropriate statutes, ordinances, regulations, laws, court orders, or professional standards. It is the intent of the parties to this contract that the City shall be indemnified and held harmless by the CMAR even in those instances where it is alleged that the City was negligent or at fault in reviewing, accepting or approving the plans, specifications or work product provided by CMAR for the project. It is further the intent of the parties that the City shall not be indemnified, or held harmless by CMAR if the City directed the CMAR to include in the plans, specifications or work product the element(s) which is the basis for any such suit, action or claim and the CMAR recommended, in writing, that such element(s) not be included in the plans, specifications or work product. It is agreed that, in those situations where the CMAR is obligated to indemnify and hold harmless the City, the CMAR shall be responsible for primary loss investigation, defense, and judgment costs. In all other situations, each party shall be responsible for its own primary loss investigation, defense and judgment costs.

7.4 INTEGRATION

- 7.4.1 This contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter addressed herein is hereby superseded.

IN WITNESS WHEREOF, the person signing this Agreement below, warrants that they have full authority to do so and that their signatures shall bind the parties for which they sign.

CITY OF GOODYEAR

NAME OF CONTRACTOR

By: _____
Jacque Behrens, CPPB

By: _____

Title: Procurement Manager

Title: _____

Date: _____

Date: _____

ATTEST

By _____
Maureen Scott, City Clerk

APPROVED AS TO FORM

By _____
Roric Massey, City Attorney

EXHIBIT A
GOODYEAR RECREATION CAMPUS PHASE I (PROJECT)

Pre-Construction Services
Scope of Services

Attend Project Meetings:

Prepare a Construction Management Plan that shall include:

- Project Schedule:
- Design Document Review/Constructability Review:
- Alternate System Evaluation:
- Cost Estimates:
- Guaranteed Maximum Price (GPM):
- Subcontractor Selection:

EXHIBIT B
GOODYEAR RECREATION CAMPUS PHASE I (PROJECT)

Pre-Construction Services
Not To Exceed Hourly Billing

Hourly Rate Schedule

The schedule of hourly labor rates for employees of the CMAR and its Subconsultants follow and are based on the approved proposal submitted to the City on _____, 2018.

LIST OF CLASSIFICATIONS:

<u>Classification</u>	<u>Direct Labor Rate</u>	<u>Total Labor Rate</u>
------------------------------	---------------------------------	--------------------------------